20-289

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~409~~. 128

THE CITY OF MEMPHIS, APPELLANT,

vs.

TALLMADGE E. BROWN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TENNESSEE.

FILED FEBRUARY 17, 1873.

Oct. 2, 1874

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a UNITED STATES OF AMERICA,
District of West Tennessee, ss:

I, Horace E. Andrews, clerk of the circuit court of the United States for said district of West Tennessee, do hereby certify that the transcript hereto annexed is a true and perfect copy of the original record now on file in said office, and as the same appears on the records of said court.

Witness my hand and the seal of said circuit court this 27th day of December, A. D. 1872.

[SEAL.] HORACE E. ANDREWS, *Clerk.*

Fees for transcript, $85.00.

1 Proceedings of the circuit court of the United States for the sixth circuit and district of West Tennessee, at a regular term of said court, held for its May term, A. D. 1872, at Memphis, in said district.

THE CITY OF MEMPHIS *vs.* TALLMADGE E. BROWN. } 170. Bill & cross-bill.

Injunction bill.—Filed April 16, 1872.

To the judges of the circuit court of the United States for the district of West Tennessee, in equity, sitting at Memphis, Tennessee:

THE CITY OF MEMPHIS, A CORPORATION CHARTERED by the law of the State of Tennessee, *vs.* T. E. BROWN, SURVIVING PARTNER, &C., A CITIZEN of the State of Iowa.

Complainant represents that on the 19th day of March, 1872, defendant, T. E. Brown, as surviving partner of T. E. Brown & Co., recovered against complainant in the circuit court of the United States for the district of West Tennessee, on the equity side of said court, a judgment or decree for the sum of $488,993.00. From this judgment or
2 decree complainant prayed and obtained an appeal to the next term of the Supreme Court of the United States, to be held at the city of Washington, on the 1st Monday in December, 1872. Complainant to prosecute the appeal gave bond in the penalty of $10,000, conditioned for the payment of costs and damages. It was unable to give a supersedeas bond in the penalty of $600,000, which was the amount fixed by the order of the court in order to obtain a supersedeas. This appeal upon the bond for costs and damages aforesaid is now pending. Complainant is advised by counsel, and so charges, that in the said judgment or decree so rendered against it, great and manifest errors exist, and complainant prosecutes said appeal in order that these errors may be corrected and said judgment reversed by the Supreme Court of the United States.

Inasmuch as complainant was not able to give the bond required in order to obtain a supersedeas, the plaintiff in said judgment has sued out execution thereupon, and placed the same in the hands of the marshal of said district of West Tennessee, and the said marshal, under the direction of said plaintiff, professes and claims to have levied

the said execution upon certain real estate as the property of complainant, and upon two steam fire-engines owned by complainant,
3 with the hose-carriages, harness, &c., appurtenant thereto, and the horses owned and kept by complainant solely for the use and operation of said fire-engines; and upon certain shares of stock issued to complainant in the Memphis Water Company; and further professes and claims to have levied the same by serving garnishments upon privilege taxes assessed or to be assessed, accrued or to accrue under complainant's ordnances and charter from banks, insurance companies, insurance agents, hotels, cotton-brokers, the Memphis City Railroad Company, auctioneers, steamboat companies, agents, persons indebted to complainant for taxes past due, or on other accounts, and "all other licenses and privileges, and individual tax-payers whose names appear in the directory, and whom the marshal is directed to serve."

Complainant files herewith, as part of this bill, as exhibits, the following papers, to wit: Marked A, a copy of said execution so issued to the said marshal, and now held and used as aforesaid by him; marked Exhibit B, a copy of the garnishment served by said marshal on the Union and Planters' Bank, the same mutatis mutandis a copy of the other garnishments served by him, and a list furnished by the said marshal of those whom he has summoned as garnishees, and of personal
4 property upon which he has levied; marked Exhibit C, a notice served by said marshal upon John Johnson, mayor of the city of Memphis, that he has levied upon and will proceed to sell on 24th of April, 1872, as therein designated, the real estate described in the advertisements of said marshal, which is made part of said notice; marked Exhibit D, another notice served by said marshal upon the said mayor of the city of Memphis, of a levy by him upon the stock of said city in the Memphis Water Company, and his advertisement to sell the same.

Complainant would show that the real estate so levied upon and advertised for sale by said marshal embraces and includes the two market-houses and the only market-houses owned by the city, and all of the fire-engine houses, and the ground upon which they are situated, which belong to the city of Memphis, being those now constantly used and occupied by complainant for keeping its fire-engines and the appurtenances thereof, and embracing that part of the city property known as Exchange square, upon which are erected the public buildings of the city, which contain the public archives, and in which the offices of the city officials are kept, and where the city council or legislature holds its meetings; a copy of the deed of dedication of said property to
5 the public use is filed, marked Exhibit E; and that the steam fire-engines levied upon are two of four fire-engines belonging to the city, all of which are now kept in constant use, or readiness for use, in extinguishing fires and protecting the city against conflagration; and every one of which is absolutely and indispensably necessary, and not more than is sufficient to supply the need of the city in that regard; and that the stock in the water company levied upon represents the interest of the city in a company organized, and promising soon to prepare to furnish water to the city for the use of individuals, and for the public benefit, by supplying the fire-engines, hydrants, &c., which stock was taken by the city in order to secure these great benefits, public and private, and in order to keep the controlling influence over the operations of said water company in the hands of the city government, and to prevent any improper use of the franchise to the detriment of the public good. But if the important privileges granted to said company

pass entirely into the hands of private persons, and the corporation freed by a sale of the city's stock from the supervision and restraint of public authority, the inhabitants will be not only oppressed by misfeasance on the part of the corporation, but the city will lose
6 control of important interests material to the proper regulation of the sanitary condition of its inhabitants, and the safety of property from conflagration.

A copy of the charter of said water company is filed, marked Exhibit F, by which the nature of the city's interest will appear; and that the taxes on privileges, licenses, and the general taxes assessed under the ordinances and charter of the city which are sought to be stopped and kept out of the city treasury are the sole dependence of the city for carrying on its government, maintaining its police and fire departments; lighting its streets; keeping up its hospital and sanitary system; preserving its streets and bridges; and, in short, its sole dependence for the support and exercise of its corporate existence and corporate powers.

The levy of said garnishments has resulted in a material cessation of voluntary payments of taxes, and embarrasses the revenue to a greater extent than the actual levies. If sustained, complainant believes it will furnish a refuge to all unwilling tax-payers, and wholly stop the revenue collections.

Complainant would show that its financial condition is greatly embarrassed, and the said plaintiff in said judgment by the use afore-
7 said of said executions renders it still worse; that the city credit is greatly impaired and depreciated, and the natural consequence of said proceedings will be to destroy it entirely; that the city has no money or other resources immediately available with which to pay said judgment, even if it desired and felt bound to do so without the revision of the Supreme Court, and that under these circumstances it cannot if deprived of its public property supply substitutes; and cannot, if deprived of its revenue from taxes, raise means from other sources to be a revenue in their place; and that, under the circumstances, which are all well known to and understood by the plaintiff in said judgment, the use aforesaid of said execution and the proceedings aforesaid under it are harsh and oppressive, and characterized by an utter disregard of the health and safety of the large population which the legislature of the State of Tennessee has commissioned this corporation to protect.

Complainant would show that the said judgment in favor of said T. E. Brown was recovered upon certain contracts for the construction in the city of Memphis of Nicholson pavements, with its undertakings in which contracts complainant insisted, and is now advised and charges, that it has fully and faithfully complied, and more than complied. Hav-
8 ing no expectation whatever that any such judgment would or could be rendered against it, complainant has made no provisions for it and taken no steps to raise money to meet it. In no event can it be paid, or can its payment be coerced in full or in large proportion, except by taxation. The attempt by the plaintiff in said judgment, by his proceedings aforesaid, to collect the same, if successfully maintained, must, by locking the wheels of the city government, effectually stop all income of revenue, by disorganizing all the machinery of its ingathering, and thus will not only work great, perhaps most appalling, evil to the property and safety of life of the citizens, but will also render it impossible for complainant ever to pay said judgment.

Complainant is advised and charges that the property of the city necessary to the exercise of its charter rights and powers, and the discharge of its charter duties, is not subject to be levied upon under execution, and that the levy aforesaid on the maket-houses, fire-engine

houses, public square, fire-engines, and appurtenances and shares of stock in the water company, is illegal. It is advised and charges that if the plaintiff in said judgment would avail himself of the taxes assessed or to be assessed upon the property and occupations of citizens,
9 his clear and only mode of procedure is by mandamus; that it is not competent nor practicable through the instrumentality of an execution to reach the tax revenues of the city, and that for this reason the garnishments aforesaid served upon the tax payers and tax-debtors to the city are wholly unauthorized and illegal. Complainant could not on its own behalf thus enforce collection of its taxes, and it is advised that the plaintiff in said judgment cannot through it and in subrogation of its rights accomplish such a result.

Complainant is further advised, and charges as a matter of law, that an execution cannot be legally issued against a municipal corporation at all, and that the property of a municipal corporation is not liableor subject to seizure and sale under execution.

Moreover, complainant would call attention again to the fact that the proceedings in which the said judgment or decree in favor of said T. E. Brown was rendered were on the equity side of said circuit court of the United States, and it submits to the court, as matter of law, that, according to the rules and modes of proceedings of a court of equity of the United States, such a decree cannot be enforced by a writ of fieri facias.

10 In consideration of the premises, therefore, the prayer of complainant is that the said T. E. Brown, survivor of T. E. Brown & Co., be made a defendant to this bill, and be required as such to answer the allegations thereof, as fully as if he were here now seperately interrogated in reference thereto, and that by the order to be made hereon the said T. E. Brown, his agents, attorneys, and all other persons, be strictly enjoined and restrained from any further proceedings under said execution, and that the marshal of this court be enjoined and restrained from proceeding to sell or from otherwise interfering with any of the said property of complainant levied on by him as aforesaid; or, if this injunction cannot be granted, that said Brown, his attorneys, and the said marshal and all other persons be strictly restrained and enjoined from any and all proceedings under said execution or otherwise to garnishee, levy upon, or sell, or in any way or manner to interfere with the taxes assessed, or to be asssessed, accruing or accrued, under the ordinances or charter of complainant upon the property, privileges, or occupations of its citizens, or the fire-engines and appurtenances thereof, or the market-houses, or the engine-houses, or the stock in the water company, or any other property or thing essential to the exercise of com-
11 plainant's corporate powers or the discharge of its corporate duties to its citizens. And that the said T. E. Brown be strictly enjoined from suing out any other writ of fieri facias upon said judgment or decree, and from any and all proceedings to enforce the same by process of fieri facias. And upon the final hearing may the injunction granted be made perpetual, or for such other or further or general relief as complainants can or may require and as with equity may be consistent, and complainants will thus ever pray, &c.

JOHN JOHNSON, *Mayor.*

STATE OF TENNESSEE,
City of Memphis:

Before the undersigned, a commissioner of the United States, duly appointed by the circuit court of the United States for the district of West Tennessee, this day personally appeared John Johnson, mayor of the city of Memphis, and made oath in due form of law that the state-

ments contained in the foregoing bill, so far as made from his own knowledge, are true, and so far as made from information of others he believes them to be true.

JOHN JOHNSON, *Mayor.*

Sworn to & subscribed before me this 16th day of April, A. D. 1871.

S. S. GARRETT,
U. S. Comm'r.

12 EXHIBIT A.

UNITED STATES OF AMERICA,
District of West Tennessee:

The President of the United States to the marshal of said district, greeting:

You are hereby commanded that of the goods and chattels, lands and tenements, of the city of Memphis to be found in your district you cause to be made the sum of four hundred & eighty-eight thousand nine hundred ninety-three dollars and cents, together with dollars and cents costs, the fees hereon endorsed, which T. E. Brown, lately in the circuit court of the United States for the district aforesaid, at Nov. term, 1871, recovered against it for debt, damages, and cost, whereof the said defendant is convicted, as appears to us of record, and have you these moneys, with interest until paid, ready to render before the judge of said court, at a court to be holden at the court-house in the city of Memphis, on the 4th Monday in May next, to the said plaintiff for his debt, damages, and costs.

Herein fail not, and have you then and there this writ.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and seal of said circuit court, the 4th Monday in November, 1871.

[L. S.] H. E. ANDREWS, *Clerk.*
, *D. C.*

Judgment the 19th day of March, 1872..... $488,993 00

Docket fee,
Clerk's fees,
Marshal's fees,
Commissioner's fees. } Costs not included.

$488,993 00

[L. S.] H. E. ANDREWS, *Clerk.*
, *D. C.*

12½ *U. S. marshal's sale.*

Circuit court of the United States, district of West Tennessee.
No. 178, equity.

THE CITY OF MEMPHIS
vs.
T. E. BROWN. } Bill.

AND

T. E. BROWN
vs.
THE CITY OF MEMPHIS. } Cross-bill.

By virtue of an execution to me directed, issued out of the circuit

court of the United States for the district of West Tennessee, in the above-entitled cause, commanding me to make out of the goods, chattels, land, and tenements of the city of Memphis the sum of four hundred and eighty-eight thousand nine hundred and ninety-three dollars, and interest, besides costs, adjudged to be due said T. E. Brown from said city of Memphis, for want of sufficient personal property wherefrom to make said sum, I have levied upon and will sell to the highest bidder for cash, at the front door of the United States court-rooms, No. 450 Main street, in the city of Memphis, county of Shelby and State of Tennessee, on the 24th day of April, A. D. 1872, between the hours of ten o'clock in the forenoon and four o'clock in the afternoon, beginning at ten o'clock in the forenoon, the following-described real estate, and all the right, title, and interest of the city of Memphis therein, or in the buildings or appurtenances thereto belonging, situate in the county of Shelby and State of Tennessee, viz:

Part of lot No. 270 in the plan of Memphis, described as follows: Beginning at the intersection of the east line of the alley between Main and Second streets, on the south side of Poplar street, and running thence east along Poplar street twenty-five (25) feet; thence south seventy-four (74) feet and three (3) inches; thence west to the east line of said alley; thence north along said alley to the place of beginning.

Also, part of lots 263 and 264 in the plan of Memphis, described as follows: Beginning at the intersection of the north line of Adams street with the west line of Second street, running thence north on the west line of Second street, one hundred and forty-eight (148) feet and six (6) inches to an alley; thence west along said alley thirty-seven (37) feet and one and a half (1½) inches to McKeon's east line; thence south one hundred and forty-eight (148) feet and six (6) inches to Adams street; thence east along Adams street to the place of beginning.

Also, part of lot two (2) in block fifty-one (51) in South Memphis, described as follows: Beginning at a point on the east side of De Soto street, three hundred feet from the southeast corner of Beale and De Soto streets, running thence south along De Soto street twenty-seven (27) feet; thence eastwardly parallel with Beale street one hundred and fifty (150) feet; thence northwardly parallel with De Soto street twenty-seven (27) feet; thence westwardly parallel with Beale street to the place of beginning.

Also, part of lot No. one hundred and forty-five (145) in the plan of Memphis, described as follows: Beginning at the southeast corner of said lot; thence northwardly along Main street twenty-five (25) feet; thence westward at right angles with Main street fifty-five (55) feet; thence southwardly parallel with Main street twenty-five (25) feet to an alley; thence eastwardly to the place of beginning.

Also, lot No. three (3) in block seventeen (17) in the plan of South Memphis, said block lying on the west side of Shelby street and between Gayoso and Hotel streets, and said lot being twenty (20) feet on Shelby street by seventy-five (75) feet in depth.

Also, the first block of ground lying east of lots Nos. 329 and 330, on the original plan of Memphis, north of Poplar street, being one hundred and forty-eight and one-half (148½) feet square; the same being situate on the northwest corner of Poplar and Third streets.

Also, all that tract of land, and all and singular the appurtenances thereunto belonging, ceded by the United States to the city of Memphis by act of Congress approved August 5, 1854, and described therein as the Memphis navy-yard, and which tract of land is known and

described on the maps of the city of Memphis issued by E. W. Rucker and by Todd & Crider as "United States naval depot."

Also, that parcel of ground in the city of Memphis described on the plan of said city as "Exchange square," and all and singular the buildings thereon and appurtenances thereunto belonging.

Also, a tract of land bounded as follows: On the east by Hernando street; on the south by Beale street; on the west by a lot owned by Augustus Berton, and on the north by a line parallel with Beale street and one hundred and fifty feet north of the north line of Beale street, designated on the map of Memphis by M. T. Williamson as "South Market," parcels whereof are more particularly described as follows: Beginning at the point of intersection of the north line of Beale street with the west line of Hernando street; thence running west on the north line of Beale street fifty (50) feet; thence northerly on a line at a right angle with Beale street one hundred and fifty (150) feet; thence easterly parallel with Beale street fifty (50) feet; thence in a direct line southerly to the place of beginning. Also, a parcel west of and adjoining the last-described parcel, commencing at a point of the north line of Beale street, fifty feet west of the west line of Hernando street, and running thence westerly along the north line of Beale street to the west line of a lot owned by Augustus Berton, about one hundred and eighty feet, more or less; thence north along the east line of said Berton's lot one hundred and fifty (150) feet; thence east on a line parallel with Beale street to the northwest corner of the tract last above described; thence south to the place of beginning.

Also, a parcel of land extending from Court street northward to Adams street, lying east of Charleston avenue and west of the Memphis and Charleston Railroad depot, being thirty-eight feet, more or less, from the east line of Charleston avenue eastward in width from Court to Jefferson street, and diminishing in width from Jefferson street northward to Adams street, where it is thirteen and one-half (13½) feet in width, more or less.

Also, part of large lot No. 499 in the plan of Memphis, described as follows: Beginning at a point on the north line of Washington street eighty (80) feet westerly from the old boundary-line between William Yates and Cheek's land, running westerly along the north line of Washington street two hundred and ninety-two (292) feet, more or less, to the eastern bank of Bayou Gayoso, as now straightened; thence northerly along the east bank of the said bayou to the south line of Poplar street; thence easterly along the south line of Poplar street three hundred and ten (310) feet, more or less, to a point eighty (80) feet westerly from the boundary-line between Yates and Cheek; thence southerly in a direct line to the place of beginning, being the same land described in the conveyance of Meredith Yates, James Elder, and D. R. Cook to the city of Memphis, recorded in book 37, pages 405 and 406 in the register's office. All the foregoing parcels lying within the corporate limits of the city of Memphis.

Also, a tract of land containing fifteen acres, more or less, being a part of lot twenty-two (22) of Garrett's sub-division, and described as follows: Beginning at a point north sixty-one degrees east from the east line of Springdale avenue, six (6) chains and fifty-nine (59) links, being twenty-five (25) links north of the center of the Memphis and Ohio Railroad; running thence north twenty-seven (27) chains and thirty-seven (37) links; thence east five (5) chains and seventy-six (76) links; thence south twenty-four (24) chains and sixty-nine (69) links to said railroad;

thence westwardly along said railroad six (6) chains and fifty-two (52) links to the place of beginning.

Ap. 3.

L. B. EATON,
United States Marshal.

13 (Indorsed:) No. 147. Circuit court of the United States, district of West Tennessee. November term, 1871. T. E. Brown vs. The City of Memphis. Fieri facias. Issued 1st day of April, 1872. Jud't 19 day of M'ch, 1872, $488,993. Interest to . Costs, not included. Marshal's commissions, . Came to hand 1st day of April, 1872. Haners & Poston, Jarnagan & Frazier, J. S. Sibley, att'y for plaintiff. Boyle & Chapman, printers, Memphis, Tenn.

14 EXHIBIT B.

UNITED STATES OF AMERICA,
District of West Tennessee:

United States circuit court.—November term, 1871.

T. E. BROWN
vs.
CITY OF MEMPHIS. } Bill.

To the Union and Planters' Bank at Memphis, Tennessee:

You are hereby summoned to be and personally appear before the United States circuit court for the district of West Tennessee, at a term of the said court to be holden at the United States court-rooms in the city of Memphis, on the 4th Monday in May, 1872, and then and there to answer as garnishee in the above-entitled case, on oath, such questions as may be asked you in relation to the money, property, or effects of the above-named defendant. And I hereby notify you that all the property, money, goods, and effects of the said defendant now in your custody or possession, or that may hereafter come into your possession, and any debt, claim, or demand of whatsoever kind due, or that may become due to said defendant, is levied on to satisfy an execution issued in the above-entitled cause in favor of the plaintiff and against the defendant, for the sum of $488,993.00 *dollars* and costs.

And I notify you not to pay the said defendant any debt or demand of whatsoever kind now or hereafter to become due, but to retain possession of the same, and all property, money, and effects of said defendant which are or may hereafter come under your control or in your possession, or become due from you to defendant, until you have made answer to this garnishment or been discharged by order of this court.

Witness my hand this 2nd day of April, 1872.

L. B. EATON, *U. S. Marshal.*
S. J. ATLEE, *Deputy Marshal.*

15 (Indorsed:) No. 147. U. S. circuit court, November term, 1871. T. E. Brown vs. The City of Memphis. Original garnishment. garnishee.

Came to hand April 2, 1872. Executed by making known contents and delivering a copy of this garnishment to William M. Farrington, presi-

dent of the Union & Planters' Bank of Memphis, at 10 o'clock a. m., this 2nd day of April, 1872.

L. B. EATON, *U. S. Marshal.*
S. J. ATLEE, *Deputy Marshal.*

Floyd & Dumars, printers, 41 Monroe st., Memphis.

16 *List of banks garnisheed.*

City Bank.
Desoto Bank.
Freedman's Saving & Trust Co.
German National Bank.
Jackson Insurance Company.
Manhattan Bank.
Memphis Life & General Insurance Co.
Merchants' National Bank.
Savings Bank of Memphis.
Union & Planters' Bank.
Emmett Bank.

List of insurance companies garnisheed.

Life Association of America.
St. Louis Mutual Life.
Ætna, Hartford, Fire.
Hartford Fire Insurance Co.
Phœnix " " "
Franklin " " "
Mutual Life " " N. Y.
Queen's " " London.
Missouri Valley Life " "
Connecticut Mutual Life Insurance Co.
Home, N. Y., Fire " "
Imperial " " " London.
North British Mercantile Fire " " "
Andes " " " Cincinnati.
17 Georgia Home Fire Insurance Co.
Ætna Life " "
American Central Fire " " St. Louis.
Globe Mutual Life " "
New York " " "
Universal " " "
Equitable " " "
Piedmont & Arlington " " "
Continental " "
International " " Liverpool.
London & Globe " " London.
Phœnix " " Brooklyn.
Knickerbocker " " "
People's " " Memphis.
Hernando " " "
Planters' " " "
Mississippi Valley " " "
Bluff City " " "
Home " " "
Washington " " "
Merchants' " " "
Northwestern Mutual " " Milwaukee.
Mound City " " "
Phœnix " " Memphis.
Reserved Mutual " " "

Insurance agents garnisheed.

B. H. Robertson.
J. G. Lunsdale.
18 H. A. Littleton.
H. T. Tomlinson.
William Ruffin.
J. S. Carpenter & Co.
Carrington Mason.
W. H. Moore.
Adolph Loeb.
William B. Richardt.
L. A. Spicer.
Samuel J. Knight.
James A. Swayne.
Dillard & Spootswood.
Green & Humes.
G. W. L. Crook.
Leo Ehrlich.
T. C. Arskin.
Ainsley, Wheeler & Co.
T. Bacon.
W. H. Brazier.
J. K. Clark & Co.
Thompson & Simmons.
Ruffin & Tucker.
Odell & Spicer.
Carolina Life Insurance Co.
Southern " " ."

Hotels garnisheed.

J. B. Robins & Co., Overton.
O. Bannon " Peabody.
19 Dwight & Schley, Worsham.
T. H. Whittemore.
Wyatt Epps, Southern.
D. Hastings, Central.
M. Allen, Commercial.

Cotton-brokers garnisheed.

John Anderson & Co.,
W. Booth,
James Broom,
N. Coranna & Co.,
William Froslich & Co.,
W. A. Goodwin,
L. Hubbard & Co.,
Katzenberger, John,
L. Kern,
J. C. & W. B. Kimball,
G. R. Miles & Co.,
C. F. Smith,
Pittman, Cubb & Co.,
George Winchester,
Marsh & Warner,

And all the cotton-brokers & factors on pages 398, 399, 400 of the Memphis City Directory.

Railroad Co. garnisheed.

Memphis City Railroad.

20 *Auctioneers garnisheed.*

M. Stoddard & Co.
George Shields & Co.
A. E. Fronkland.
A. Fuller & Co.
J. G. Baldwin & Co.
Royster Trezevant & Co.
M. C. Cary & Co.

Steamboat companies & agents.

Mississippi & Arkansas River Packet Co., W. H. Kennedy, agent.
Memphis & New Orleans Packet Co., R. W. Lightburn, agent.
Memphis & White River Packet Co., Elliott & Miller, agents.
Memphis & St. Louis Packet Co., Flim Culvert, agent.

Tax-debtors garnisheed.

John Overton,
R. C. Brinkley,
W. B. Woldron,
Moses J. Wicks,
E. W. Manford,
J. K. Frayer,
R. Dudley Frayzer,
W'm H. A. Littleton,
21 Memphis Water Co,
Memphis Gayoso Gas Co.,
W. A. Bickford,
Paul Cicalla,
H. A. Kellar,
Thomas A. Cook,
W. B. Greenlan,
W. B. Greenlan & Co.,
H. M. Tanus,
John Overton, jr.,
J. H. Dupree,
Arch Wright,
Overton Hotel Co.,

And all other licenses and privileges, and individual tax-payers, whose names appear in the directory, and whom the marshal is directed to serve.

Personal property levied on and advertised to be sold April 23d, 1872.

1,000 shares capital stock Memphis Water Co., each share $100.
1 rotary steam fire-engine, No. 4, called the "Washington;" 1 tender or coal-cart; 1 hose-carriage; about 800 f't of hose; 1 brown horse and harness therefor; 2 large bay horses and double harness for the same;
1 large iron pump, being the steam fire-engine, appurtenances,
22 and horses now at the engine-house on Main street, between Market and Winchester streets.
1 steam fire-engine, called the "Valentine" No. 2; 1 tender & coal-cart, & 1-horse carriage and harness therefor; 1 mouse-colored horse; 1 dark-bay horse; 3 blood bay horses; 2 double sets of engine-harness, about 800 f't of hose. The same being the steam fire-engine, appurtenances, and horses now situated at the engine-house on Shelby street, between Gayoso and Hotel streets.

EXHIBIT C.

OFFICE OF THE UNITED STATES MARSHAL,
DISTRICT OF WEST TENNESSEE,
Memphis, Tenn., April 3d, 1872.

Hon. JOHN JOHNSON,
Mayor of Memphis, Tenn.:

You will please take notice that I have levied upon the property described in the hereto attached advertisement, and that I will proceed to sell, at the time and place therein designated, the property described.

L. B. EATON,
United States Marshal, District of West Tennessee.

U. S. marshal's sale.

Circuit court of the United States, district of West Tennessee.—No. 178, equity.

THE CITY OF MEMPHIS
vs.
T. E. BROWN. } Bill.

AND

T. E. BROWN
vs.
THE CITY OF MEMPHIS } Cross-bill.

By virtue of an execution to me directed, issued out of the circuit court of the United States for the district of West Tennessee, in the above-entitled cause, commanding me to make out of the goods, chattels, land, and tenements of the city of Memphis the sum of four hundred and eighty-eight thousand nine hundred and ninety-three dollars and interest, besides costs, adjudged to be due said T. E. Brown from said city of Memphis, for want of sufficient personal property wherefrom to make said sum, I have levied upon and will sell to the highest bidder for cash, at the front door of the United States court-rooms, No. 450 Main street, in the city of Memphis, county of Shelby and State of Tennessee, on the 24th day of April, A. D. 1872, between the hours of ten o'clock in the forenoon and four o'clock in the afternoon, beginning at ten o'clock in the forenoon, the following-described real estate, and all the right, title, and interest of the city of Memphis therein, or in the buildings or appurtenances thereto belonging, situate in the county of Shelby and State of Tennessee, viz:

Part of lot No. 270 in the plan of Memphis, described as follows: Beginning at the intersection of the east line of the alley between Main and Second streets, on the south side of Poplar street, and running thence east along Poplar street twenty-five (25) feet; thence south seventy-four (74) feet and three (3) inches; thence west to the east line of said alley; thence north along said alley to the place of beginning.

Also, part of lots 263 and 264 in the plan of Memphis, described as follows: Beginning at the intersection of the north line of Adams street with the west line of Second street, running thence north on the west line of Second street one hundred and forty-eight (148) feet and six (6) inches to an alley; thence west along said alley thirty-seven (37) feet and one and a half (1½) inches to McKeon's east line; thence south one hundred and forty-eight (148) feet and six (6) inches to Adams street; thence east along Adams street to the place of beginning.

Also, part of lot two (2) in block fifty-one, (51,) in South Memphis, described as follows: Beginning at a point on the east side of De Soto street, three hundred feet from the southeast corner of Beale and De Soto streets; running thence south along De Soto street twenty-seven (27) feet; thence eastwardly parallel with Beale street one hundred and fifty (150) feet; thence northwardly parallel with De Soto street, twenty-seven (27) feet; thence westwardly parallel with Beale street to the place of beginning.

Also, part of lot No. one hundred and forty-five (145) in the plan of Memphis, described as follows: Beginning at the southeast corner of said lot; thence northwardly along Main street twenty-five (25) feet;

thence westward at right angles with Main street fifty-five (55) feet; thence southwardly parallel with Main street, twenty-five (25) feet to an alley; thence eastwardly to the place of beginning.

Also, lot No. three (3) in block seventeen (17) in the plan of South Memphis; said block lying on the west side of Shelby street, and between Gayoso and Hotel streets, and said lot being twenty (20) feet on Shelby street by seventy-five (75) feet in depth.

Also, the first block of ground lying east of lots Nos. 329 and 330, on the original plan of Memphis, north of Poplar street, being one hundred and forty-eight and one-half (148½) feet square; the same being situate on the northwest corner of Poplar and Third streets.

Also, all that tract of land, and all and singular the appurtenances thereunto belonging, ceded by the United States to the city of Memphis by act of Congress, approved August 5, 1854, and described therein as the Memphis navy-yard, and which tract of land is known and described on the maps of the city of Memphis, issued by E. W. Rucker and by Todd & Crider, as "United States naval depot."

Also, that parcel of ground in the city of Memphis described on the plan of said city as "Exchange square," and all and singular the buildings thereon and appurtenances thereunto belonging.

Also, a tract of land bounded as follows: On the east by Hernando street; on the south by Beale street; on the west by a lot owned by Augustus Berton, and on the north by a line parallel with Beale street and one hundred and fifty feet north of the north line of Beale street, designated on the map of Memphis, by M. T. Williamson, as "South Market," parcels whereof are more particularly described as follows: Beginning at the point of intersection of the north line of Beale street with the west line of Hernando street; thence running west on the north line of Beale street fifty (50) feet; thence northerly, on a line at a right angle with Beale street, one hundred and fifty (150) feet; thence easterly parallel with Beale street fifty (50) feet; thence in a direct line southerly to the place of beginning. Also, a parcel west of and adjoining the last-described parcel, commencing at a point of the north line of Beale street, fifty feet west of the west line of Hernando street, and running thence westerly along the north line of Beale street to the west line of a lot owned by Augustus Berton, about one hundred and eighty feet, more or less; thence north along the east line of said Berton's lot one hundred and fifty (150) feet; thence east on a line parallel with Beale street to the northwest corner of the tract last above described; thence south to the place of beginning.

Also, a parcel of land extending from Court street northward to Adams street, lying east of Charleston avenue and west of the Memphis and Charleston Railroad depot, being thirty-eight feet, more or less, from the east line of Charleston avenue eastward in width from Court to Jefferson street, and diminishing in width from Jefferson street northward to Adams street, where it is thirteen and one-half (13½) feet in width, more or less.

Also, part of large lot, No. 499, in the plan of Memphis, described as follows: Beginning at a point on the north line of Washington street eighty (80) feet westerly from the old boundary-line between William Yates and Cheek's land, running westerly along the north line of Washington street two hundred and ninety-two (292) feet, more or less, to the eastern bank of Bayou Gayoso, as now straightened; thence northerly along the east bank of the said bayou to the south line of Poplar street; thence easterly, along the south line of Poplar street, three hundred and ten (310) feet more or less to a point eighty (80) fee-

westerly from the boundary-line between Yates and Cheek; thence southerly, in a direct line, to the place of beginning, being the same land described in the conveyance of Meredith Yates, James Elder, and D. R. Cook to the city of Memphis, recorded in book 37, pages 405 and 406 in the register's office. All the foregoing parcels lying within the corporate limits of the city of Memphis.

Also, a tract of land containing fifteen acres, more or less, being a part of lot twenty-two (22) of Garrett's sub-division, and described as follows: Beginning at a point north sixty-one degrees east from the east line of Springdale avenue six (6) chains and fifty-nine (59) links, being twenty-five (25) links north of the center of the Memphis and Ohio Railroad; running thence north twenty-seven (27) chains and thirty-seven (37) links; thence east five (5) chains and seventy-six (76) links; thence south twenty-four (24) chains and sixty-nine (69) links to said railroad; thence westwardly along said railroad six (6) chains and fifty-two (52) links to the place of beginning.

AP. 3.

L. B. EATON,
United States Marshal.

23 EXHIBIT D.

The mayor of the city of Memphis, Hon. John Johnson for said city:

You will take notice that I have levied on one thousand shares of stock in the "Memphis Water Company," being all the shares owned by the said city of Memphis in said company, or to which said city has any right or title.

L. B. EATON, *U. S. Marshal.*
L. J. ATLEE, *Deputy.*

(Advertisement attached to Exhibit D.)

U. S. marshal's sale.

In the circuit court of the United States for the district of West Tennessee.

T. E. BROWN
vs.
THE CITY OF MEMPHIS. } No. 147. E. Cross-bill.

By virtue of execution in the above-entitled cause, to me directed, from the court aforesaid, now in my hands, commanding me to make the sum of four hundred and eighty-eight thousand nine hundred
24 and ninety-three ($488,993) dollars out of the goods, chattels, land, and tenements of the said defendant, the city of Memphis, I have levied upon as the property of said city, and will sell to the highest bidder for cash, on Tuesday, 23d day of April, A. D. 1872, at ten o'clock a. m. on said day, the following-described property, to wit: One thousand shares of the capital stock of the "Memphis Water Company," each share being for the sum of one hundred ($100) dollars; the sale of which will be at the front door of the U. S. court-room, No. 450 Main street, in the city of Memphis, Tennessee.

Also, one rotary steam fire-engine, No. 4, called the "Washington," one tender or coal-cart, one hose-carriage, about 800 feet hose, one brown horse and harness therefor, two large bay horses and double

harness for same, one large iron pump, being the steam-fire engine, appurtenances, and horses now at the engine-house, situated on Main street, between Market and Winchester streets, at which place
25 said property will be sold between the hours of ten o'clock a. m. and four o'clock p. m. of the day aforesaid.

Also, one steam fire-engine, called "Valentine No. 2," made by A. B. and E. L. Salter, Cincinnati, Ohio, one tender or coal-cart, and one hose-carriage and harness therefor, one mouse-colored horse, one dark-bay horse, and three blood bay horses, and two double sets of engine-harness, about 800 feet of hose, the same being the steam fire-engine and appurtenances and horses now situate at the engine-house on Shelby street, between Gayoso and Hotel streets, at which place said property will be sold on the day aforesaid, between the hours of ten o'clock a. m. and four o'clock p. m.

L. B. EATON,
U. S. Marshal.

EXHIBIT "E."

The undersigned, proprietors of the land on which the town of Memphis has been laid off, having been informed that doubts have arisen in relation to the original intention concerning the same, for the purpose of removing such doubts do hereby make known and declare the
26 following as their original and unequivocal designs and intentions in relation thereto.

ART. I. All the ground laid off, in said town as streets and alleys: We do say that it was always our intention that the same should forever remain as public streets and alleys, subject to the same rules and regulations as all streets and alleys in towns and cities forever, obligatory on ourselves, heirs, or assigns, and by these presents we do bind ourselves, our heirs, &c., that the above streets and alleys shall continue easterly as far as the lots are laid off, and the streets, though not the alleys, as far east as the Bayo Gayoso, agreeably to the last survey and sale.

ART. II. In relation to the ground laid off in said town as public squares, viz: Court, Exchange, Market, and Auction squares, it was the intention of the proprietors they should forever remain as public grounds, not subject to private appropriation, but public uses only, according to the import of the above expressions, Court, Exchange, Market, and Auction squares.

ART. III. In relation to the piece of ground laid off and called "the promenade," said proprietors say that it was their original intention, is now, and forever will be, that the same should be public ground for such use only as the word imports, to which heretofore by their acts for
27 that purpose it was conceived all right was relinquished for themselves, their heirs, &c., and it is hereby expressly declared, in conformity with such intention, that we, for ourselves, heirs, and assigns, forever relinquish all claims to the same piece of ground called "the promenade," for the purpose above mentioned. But nothing herein contained as to the promenade shall bar the town from authorizing one or more ferries to be kept by the proprietors, their heirs or assigns, opposite said promenade and the mouth of any of the cross-streets on Mississippi River.

ART. IV. In relation to the ground lying between the western boundary of the lots from No. 1 to 24, inclusive, and the same line continued in a direct course to the south bank of the Bayou Gayoso, and the

eastern margin of Wolf and Mississippi Rivers, and between Jackson street extended to the river and the said south bank of the bayou, it was the original intention of the proprietors that there should on said grounds forever be a landing or landings for public purposes of navigation or trade, and that the same should be forever enjoyed for those purposes obligatory on ourselves, heirs, and assigns; but all other rights not inconsistent with the above public rights incident to the soil it never
28 was the intention of the proprietors to part with, such as, keeping a ferry or ferries on any of the public ground, an exclusive right to which they always held sacred and never intended to be parted with, in whole or in part.

ART. V. The first block of ground lying east of lots Nos. 329 and 330, and north of Poplar street, being 148½ feet square, having heretofore been used as a public burying-place, the same is hereby given, granted, and conveyed forever to the town of Memphis, provided the practice of burying henceforward cease thereon.

ART. VI. Inasmuch as they have been advised that it is the general wish of the citizens of the town that the public burying-place should be removed out of the town, and being applied to by the corporation of Memphis for the purchase of four acres of ground on the second bayou for a burying-ground, in consideration of their desire to furnish said town of Memphis with every convenience which its wants, whether natural, sacred, or commercial, may require, they do hereby give, grant, bargain, and sell forever to the citizens of the town of Memphis, and all their heirs and assigns forever, for a public burying-ground, subject to such regulations as to them may seem or appear requisite, the following described lots of land, namely: Beginning at a black gum on the south
29 bank of the second bayou; thence south 12° east twenty poles seven and a half links to a stake with a white-oak and a black-oak pointer; thence south 78° west thirty poles to a stake with a black-gum pointer; thence north 12° *degrees* west twenty poles seven and a half links to a black oak on the bank of the bayou, a gum and beach pointers near the mouth of a small ravine; thence up the south bank of the second bayou to the beginning, containing four acres and including the present burying-ground. And they further declare and acknowledge that these shall forever be kept open a right of way not less than twenty feet wide from some point on the Alabama road as it now runs, opposite to the grave-yard, directly to it.

In witness whereof we have hereunto set our hands and seals this 18th day of September, 1828.

JOHN OVERTON, [SEAL.]
One of the Proprietors.
JOHN C. McLEMORE, [SEAL.]
GEORGE WINCHESTER, [SEAL.]
WILLIAM WINCHESTER, [SEAL.]
Surviving Owners.

By M. B. WINCHESTER,
Special Agent and Att'y-in-fact.

Witnesses:
RICH'D S. WILLIAMS.
WILLIAM LAWRENCE.
M. B. WINCHESTER.

Recorded in Book B, pages 171, 172, 173.
County register's office, Shelby County, Tennessee.

29[1] EXHIBIT F.

Charter, judgment, contract, and mortgage of the Memphis Water Co.

[Cut.]

Memphis: Franklin job-printing house and book-bindery. 1872.

29[2] *President.*—John Cubbins.
Secretary and Treasurer.—Charles J. Phillips.
Solicitor.—Oliver P. Lyles.
Board of Directors.—John Cubbins, J. H. Humphreys, John S. Toof, J. E. Randle, B. C. Brown.

29[3] An act to incorporate the Memphis Water Company.

SECTION 1. *Be it enacted by the general assembly of the State of Tennessee*, That Thomas W. Brown, John S. Toof, John Gunn, and Benjamin C. Brown, and such other persons who may associate themselves with them, be, and they are hereby, constituted a body-corporate under the name and style of the "Memphis Water Company," and by that name shall have succession for ninety-nine years, and shall have power to contract and be contracted with; to sue and be sued; to have and use a common seal; to borrow money upon their bonds, or other obligations, for such amounts and upon such conditions as to time and place of payment, and rates of interest, as may be agreed upon between the contracting parties; to purchase and hold such real estate and personalty as may be necessary for the exercise and enjoyment of the powers and privileges by this act conferred upon said company; to elect all necessary officers; to make and establish by-laws and privileges incident to corporations.

SEC. 2. *Be it further enacted*, That the capital stock of said company shall be one hundred thousand dollars, which sum, when necessary, may be increased to two million dollars by vote of the stockholders. Said stock shall be divided into shares of one hundred dollars each, and each share upon which all legal calls have been paid shall entitle its holder to one vote in all elections of the company: *Provided*, That except at the first election no share of stock shall entitle its holder to a vote unless he shall have held the same in his own right at least sixty days previous to said election. Stock shall only be assigned upon the books of the company.

29[4] SEC. 3. *Be it further enacted*, That the management of the affairs of said company shall be vested in five directors, who shall be elected at a general meeting of the stockholders annually. Said directors shall elect one of their number to be president of said company. They may also appoint a secretary and treasurer for said company, and may take from such officer a bond, in such sum as they may deem sufficient, conditioned for the proper performance of his duties, and for correctly accounting for all monies which may come into his hands. All officers elected shall hold their offices until their successors are elected and qualified.

SEC. 4. *Be it further enacted*, That said company shall be, and it is hereby, authorized to establish and construct water-works in and adjacent to the city of Memphis, in this State, and to supply the said city and the inhabitants thereof with a plentiful supply of water; and for this purpose they are hereby authorized and empowered, and invested with the exclusive privilege to lay down pipes, and to extend aqueducts and

conductors through all or any of the streets, lanes, and alleys of the city of Memphis, and supply to the inhabitants of said city water by public works. And for the purpose of laying down such pipes, aqueducts, and conductors, may take up the pavements or side-walks upon such streets: *Provided*, That said pavements and side-walks shall be taken up in such manner as to give the least inconvenience to the inhabitants of said city, and that the same shall be replaced with all convenient speed by and at the expense of said company. The privilege hereby granted to be exclusive for thirty years only, after which it is not to be exclusive.

SEC. 5. *Be it further enacted*, That the works and operations of said company shall be so construed and managed as not to affect the health or comfort of the citizens of Memphis prejudicially; and nothing in this act shall be so construed as to absolve the company from any legal proceedings to restrain or abate any nuisance arising from their operations.

SEC. 6. *Be it further enacted*, That if any person shall injure or destroy any portion of the works, fixtures, or other property of the company, such person or persons shall be liable to the company for all damages sustained by them in consequence of such act or proceedings,
29[5] and in addition thereto shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not less than one hundred or more than one thousand dollars.

SEC. 7. *Be it further enacted*, That said company shall be, and they are hereby, empowered and authorized to condemn and take such lands as may be necessary for the establishment of their reservoirs and works, and the right of way through all lands between their reservoirs and the said city of Memphis to lay their pipes, aqueducts, or conductors, and to keep the same in repair, is hereby granted them: *Provided*, That such pipes and conductors shall be laid in such manner as to do as little injury to the property of private persons as possible: *And provided further*, That the company shall make compensation to the owner of the real estate so condemned and taken, or through which the pipes, conductors, or aqueducts may be laid. If the owner and company cannot agree upon the amount of compensation which should be paid, the same shall be assessed in the manner provided by the code of Tennessee, sections 1,325 to 1,348.

SEC. 8. *Be it further enacted*, That the stock of the company shall be paid up on such calls as the president and directors may prescribe. Any stockholder who shall fail to pay any calls made by the directors shall forfeit his stock and all payment made thereon, or the president and directors may recover the amount of such calls by suit. The company shall have no power to release stockholders from payment of their stock to the prejudice of creditors. Said company may organize whenever the sum of fifty thousand dollars is subscribed.

SEC. 9. *Be it further enacted*, That to secure payment of bonds issued or monies borrowed, the president and directors may mortgage all the property of the company existing at the date of the mortgage, as well as all the property by the company to be afterwards acquired, and the franchises granted by this act. And in case of foreclosure and sale of such mortgage, the purchaser or purchasers shall succeed to and be vested with all the *the* powers and privileges, and be subject to all the duties and liabilities of said company.

SEC. 10. *Be it further enacted*, That said company shall furnish
29[6] water to the city of Memphis sufficient to supply the public offices, police-stations, hospitals, and engine-houses, and for extinguishing

fires, free of charge. But this section shall not be so construed as to authorize said city to use the water supplied by said company for cleaning or sprinkling the streets, or for any other such purpose, without paying therefor. Said company shall also furnish, free of charge, whenever required by the city, water sufficient to supply a fountain (to be erected by the city) in Court square, and another in Market square.

SEC. 11. *Be it further enacted*, That, at any time after twenty years after passage of this act, the city of Memphis, should the authorities thereof desire to do so, shall have the right to purchase the works, pipes, and other property of the company upon such terms as to price and mode of payment as may be agreed upon. Should the parties be unable to agree upon a price, such works shall be valued by five disinterested persons, two to be appointed by each party, and the fifth to be selected by the four thus appointed, and upon payment to the company of the valuation so assessed, the right to all such property and to the privileges granted by this act shall vest in said city.

SEC. 12. *Be it further enacted*, That all acts in conflict with this act be and the same are hereby repealed, and that this act take effect and be in force from and after its passage.

Passed February 28, 1870.

W. O. N. PERKINS,
Speaker of the House of Representatives.
D. W. THOMAS,
Speaker of the Senate.

I, Andrew J. Fletcher, secretary of state of the State of Tennessee, do certify that the foregoing is a copy of an act of the general assembly of the State of Tennessee, the original of which is now of record in my office.

In testimony whereof I have hereunto subscribed my official signature, and, by order of the governor, affixed the great seal of the State of Tennessee, at the department, in the city of Nashville, this 3d day of March, A. D. 1870.

[SEAL.]

A. J. FLETCHER,
Secretary of State.

29[7] THE STATE OF TENNESSEE:

Pleas before the supreme court of said State for the western division thereof, at Jackson, on the first Monday in April, 1871. Present, the honorable A. O. P. Nicholson, chief justice, and James W. Deadrick, Thomas J. Freeman, John L. T. Sneed, Thomas A. R. Nelson, and Peter Turney, associate judges. To wit, June the 28th, 1871. No. 185, first circuit court, Shelby County.

THE CITY OF MEMPHIS
vs.
THE MEMPHIS WATER COMPANY. } Opinion.

The facts in this case agreed upon by the parties, and necessary to be noticed in determining the question raised, are as follows:

The city of Memphis has been for many years a municipal corporation, regularly chartered and organized.

On the 18th day of December, 1866, the mayor and aldermen passed an ordinance to create a board of commissioners for the erection, care, and maintenance of the Memphis water-works.

The commissioners were appointed and organized, and entered on the

discharge of their duties, and made reports from time to time to the mayor and aldermen, the last of which was made in April, 1869, when a plan of constructing water-works was reported, and adopted by the board of mayor and aldermen.

The commissioners caused surveys, maps, drawings, measurements, and estimates to be made preparatory to commencing the actual construction of the water-works. In these preparatory steps the city of Memphis expended $30,000 prior to the 28th of February, 1870, at which time the city had not commenced the actual construction of water-works. No contracts, as contemplated by reports of the com-
29 missioners, were made or entered into, and no advertisement for proposals had been made as contemplated by said reports.

The want of available means by the city, and the financial distress and disturbed condition of the country, were the causes of the non-prosecution of the building of water-works by the city.

On the 28th of February, 1870, the legislature granted a charter of incorporation to the Memphis Water Company for the purpose of supplying water to the city of Memphis and the inhabitants thereof, by means of public works.

The water company, claiming the right to do so under its charter, immediately on its organization expended sums of money in and about the construction of its water-works in the city of Memphis, and proceeded to take up the pavements and side-walks, and to use the streets, lanes, and alleys of the city for the purpose of laying down its pipes, aqueducts, and conductors, and constructing its water-works under its charter, without the consent, and in opposition to the will, of the general council of the city of Memphis, and without making compensation therefor to the city or to the adjacent property-holders.

After the water company entered upon the construction of its water-works under its charter, the city of Memphis commenced to erect water-works for the purpose of supplying the city and its inhabitants with water, and proceeded to erect the same on its own account, in violation of the provisions of the charter of the water company, which declares that the privileges granted it are exclusive for the period of thirty years, claiming that the city has a right to do so under the city charter, which the water company on its part denies, and insists that the action of the city is an invasion of its rights under its charter.

These are the material facts agreed on, and submitted to the court below for adjudication.

The court below decided the case against the city of Memphis, and she appeals to this court.

We have devoted as much time to the investigation of the important legal questions involved in this case as was practicable, in view of the heavy pressure of business now upon us. Our labor has been so materially aided and lessened by the elaborate and exhaustive printed
29 arguments on both sides, that we are enabled to announce the results to which we have arrived; but have not the time, however, to discuss the several questions so ably and ingeniously argued, and must be content to state only the several propositions of law which are decisive of the case.

1st. The city of Memphis is a municipal or public corporation, as contradistinguished from a private corporation.

Municipal or public grants of franchises are always subject to the control of the legislative power, for the purpose of amendment, modification, or entire revocation. 5 Hum., 241; 3 Head., 319; Cooly's Const. Lim. 192.

2d. The erection of water-works to supply a city and its inhabitants with water falls naturally and legitimately within the ordinary powers of its charter of incorporation, and the exercise of this power within the limits chartered needs no enabling act of the legislature.

It is therefore one of the powers of the corporation, subject to amendment, modification, limitation, or revocation by the legislature. To what extent, if at all, the legislature can interfere with interests acquired or vested in the due exercise of its corporative powers by a public corporation, presents a question not now necessary to be examined or determined. 9 Hum., 268; 11 Hum., 582.

3d. The repeal, revocation, or modification of the powers of a municipal corporation may be effected, either expressly or by necessary implication, by subsequent legislation. Hence, if the act of 28th of February, 1870, incorporating the Memphis Water Company, with exclusive powers to erect water-works in Memphis, and supply the city and its inhabitants with water, was a valid and constitutional exercise of legislative power, it operated, by necessary implication, as a revocation of the power of the city corporation to erect water-works for the same purposes.

4th. The Memphis Water Company is a rivate corporation, and upen the acceptance of its charter by the corporators, and their organization under it, a contract was thereby consummated between the State and the corporators which was beyond the reach of subsequent legislative interference. It is conceded that by its express terms the privilege granted to the Memphis Water Company for thirty years is exclusive.

29[10] What provisions of the constitution forbid the granting of a charter with an exclusive privilege? The legislature has the right to do whatever is not expressly or by necessary implication forbidden by the constitution. 8 Hum., 1; Cooly's Const. Lim., 87–168–173.

5th. By sec. 22, article 1, constitution of 1834, perpetuities and monopolies are contrary to the genius of a free State, and shall not be allowed.

The charter of the Memphis Water Company limits the duration of the corporation to ninety-nine years, with exclusive privilege for thirty years. It does not, therefore, create a perpetuity. Does it create a monopoly by securing to the company the exclusive privilege of supplying the city with water by means of water-works?

We know of no better definition of a monopoly than that given by Lord Coke, and adopted by the Supreme Court in the case of the Charles River Bridge vs. Warren Bridge, 11 Peters, 607:

"A monopoly is an exclusive right, granted to a few, of something which was before of common right; so that it is not a case of monopoly if the subject had not the common right or liberty before to do the act, or possess or enjoy the privilege or franchise granted, as a common right."

The question, then, is narrowed down to the inquiry: Did the individuals composing the Memphis Water Company have the right, before their incorporation, in common with all others, to erect water-works in Memphis, to take up pavements, occupy the streets, and do such things as were necessary and proper in completing their water-works? It is clear that none had the right to do these things except the city of Memphis, by virtue of its corporate powers; and this right on the part of the city was exclusive until it was taken away by the legislature and transferred to the Memphis Water Company. It is no more a monopoly when conferred on the Water Company than when it belonged to the city of Memphis. It was an exclusive privilege when exercised by the

city, but it was not a monopoly. It is an exclusive privilege in the Memphis Water Company, but not a monopoly. Black, 4 book, p. 159; 31 Mayl. R., 346.

6th. Is the exclusive privilege granted by its charter to the Memphis Water Company forbidden by sec. 7, art. 11 of the constitution?

29[11] It would be difficult to show that the privileges secured to the water company are not embraced within the prohibitions of this section, but it is even more clear that the power to grant an act of incorporation is forbidden by the language of the body of this section. The proviso to this section, however, gives the power to grant charters of incorporation, and for the purpose of enabling the legislature thereby to grant exclusive privilege, which but for the proviso would be prohibited by the body of the section. In this grant of power to create corporations there is no limitation on its powers, at least as contained by the general terms of the section. The legislature is required to consult "the public good," in granting charters. 1 Sneed, 115; 4 Col., 414; Cooly's Const. Lim., 281.

7th. The streets, alleys, and pavements of the city of Memphis had been dedicated to the public as easements, and placed by the charter of the city under the control and management of the city authorities. If the city had gone on to erect water-works, and supply the inhabitants with water by means of pipes and aqueducts and conductors, they would have had the right to use the streets, pavements, and alleys for the purpose of supplying the water, and no owner of abutting lots could have objected, because no compensation was paid.

It would have been such appropriation of the easements for the benefit of the inhabitants as was authorized and contemplated by the municipal corporation.

The legal effect of the act incorporating the Memphis Water Company was to revoke this power as to the city corporation, and to vest it in the water company. The easements are alike subject to appropriation, for the purposes of the privilege, without compensation, whether the privilege be exercised by the city or by the water company. Angel on Highw., 25-312; 9 Hum., 268.

Our conclusion is, that, upon the facts agreed, the Memphis Water Company has the exclusive privilege of supplying the city of Memphis and its inhabitants with water by means of the water-works erected in pursuance of their charter.

Such was the judgment of the court below, and we affirm it.

NICHOLSON.

29[12] THE CITY OF MEMPHIS, PLAINTIFF IN error, *vs.* THE MEMPHIS WATER COMPANY, DEFENDANT in error. } Judgment.

This cause coming on to be heard before the honorable judges of the supreme court of Tennessee, on the duly certified transcript of the record of the proceedings and judgment in the court below, to wit, the first circuit court of Shelby County, and this court being sufficiently advised, it is considered that there is no error in the judgment of the said first circuit court in the aforesaid premises, and the said judgment is therefore affirmed. It is therefore considered, and so adjudged and decreed, that the city of Memphis is not entitled to the relief, nor to any part thereof, sought by the said plaintiff in error, and on its behalf, and that

the charter of the defendants, the Memphis Water Company, is not in whole nor in part, nor in any provision thereof, in conflict with any constitutional provision; that the said Memphis Water Company have the right to the undisturbed enjoyments of all the rights, privileges, and franchises granted the said company by its charter, which is an act of the general assembly of the State of Tennessee, passed February 28, 1870, and entitled "An act to incorporate the Memphis Water Company."

The said Memphis Water Company is hereby confirmed in all the said rights, privileges, and franchises conferred by the aforesaid act incorporating the same, without any abridgement or modification thereof, and it is ordered and decreed that the said company be quieted and remain unmolested in the use, exercise, and enjoyment of the same, free from all interruption or interference by or on behalf of the city of Memphis. And it is further ordered, adjudged, and decreed that the city of Memphis and its corporate authorities now and in the future be enjoined, and they are hereby enjoined and restrained, from asserting, claiming, or exercising, for the period of thirty years, without the consent of defendants, the Memphis Water Company, the right, privilege, franchise, or business of supplying the city of Memphis and the inhabitants thereof, or either, with water by means of public works, it being the exclusive privilege of defendants' corporation aforesaid so to do for the aforesaid period of thirty years.

29[13] The court being likewise of opinion, and so deciding, that the defendants, The Memphis Water Company, is "authorized to establish and construct water-works in and adjacent to the city of Memphis, and to supply the said city and the inhabitants thereof with a plentiful supply of water;" and for that purpose "that it is authorized, empowered, and invested with the exclusive privilege to lay down pipes and to extend aqueducts and conductors through all or any of the streets, lanes, and alleys of the city of Memphis, and to supply the inhabitants of the said city with water by public works," and, for the purpose of laying down such pipes, aqueducts, and conductors, may take up the pavements or side-walks upon such streets, lanes, and alleys—said pavements and side-walks to be taken up in such manner as to give the least inconvenience to the inhabitants of said city, and the same to be replaced with all convenient speed by and at the expense of the said water company—and without the consent of the said city of Memphis or the inhabitants thereof, and without compensation to the said city, inhabitants, or the adjacent property-holders or lot-owners.

It is therefore ordered, adjudged, and decreed that the city of Memphis and its corporate authorities now and in the future be enjoined, during the ninety-nine years for which said charter has been granted the defendants, The Memphis Water Company, from interfering with, interrupting, or resisting the establishment and construction by the defendants, The Memphis Water Company, of water-works in and adjacent to the city of Memphis in the manner prescribed in the charter of the said Memphis Water Company, and also from interfering with, interrupting, or resisting the defendants, The Memphis Water Company, in the exercise of the exclusive privilege to lay down pipes, aqueducts, and conductors through all or any of the streets, lanes, or alleys of the city of Memphis, for the purpose of supplying the said city of Memphis and the inhabitants thereof with water by means of public works, as provided for and contemplated in the charter of said defendants, and also from interfering with, interrupting, or resisting the defendants, The said Memphis Water Company, in taking up the pavements or side-

walks in such streets, lanes, or alleys, for the purpose of laying down such pipes, aqueducts, and conductors, the same to be taken up and replaced as prescribed in the defendants' charter.

29[14] And the city of Memphis, and the corporate authorities thereof, are enjoined and restrained in like manner from interfering with, interrupting, or resisting the defendants, The Memphis Water Company, in the exercise of such incidental powers with reference to the use and *occupation* of said streets, lanes, and alleys, for the purposes, and in the mode herein before declared, as may be necessary and proper to the carrying out of the privileges, franchises, and rights expressly granted in the said charter to the said defendants.

It is further adjudged that the defendants, The Memphis Water Company, recover of the city of Memphis, and of William M. Randolph, its surety in the appeal-bond, all the costs of this cause in this court and in the court below, for which let execution issue.

OFFICE OF THE CLERK OF SUPREME COURT,
FOR THE WESTERN DIVISION OF THE STATE OF TENNESSEE.

I, John H. Freeman, clerk of said court, do hereby certify that the foregoing is a true, perfect, and complete copy of the opinion as well as the judgment of said court, pronounced at its April term, 1871, in the case of The City of Memphis against The Memphis Water Company, as appears of record now on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the court, at office in Jackson, on this the 29th day of June, 1871, and the Independence of the United States the 95th year.

[SEAL.] JOHN H. FREEMAN, *Clerk.*

29[15] *Contract.*

This agreement, made this the eighteenth day of January, A. D. 1872 by and between the city of Memphis and the Memphis Water Company, witnesseth:

Whereas the Memphis Water Company has, by a vote of its stockholders, increased its capital stock to and has fixed the same at the sum of two hundred thousand dollars; and whereas, in accordance with the provisions of an ordinance passed on the eleventh day of December, 1871, and ratified by three-fourths of the qualified voters of the city of Memphis, at an election held for the purpose on the sixth day of January, 1872, and also in accordance with the terms of the report of the joint committee, to which was referred the proposition of the Memphis Water Company, adopted by the general council of the city of Memphis on the eleventh day of December, 1871, to which said ordinance and report, remaining of record in the office of the register of the city of Memphis, reference is now here made, the city of Memphis, by John Johnson, its mayor, has subscribed for one thousand shares, aggregating one hundred thousand dollars, and being one-half of the capital stock of the Memphis Water Company; and the Memphis Water Company has issued and delivered to the city of Memphis a certificate, showing that the said one thousand shares of stock have been fully paid for.

1. Now, in consideration of the premises, and in accordance with the said ordinance and the terms of the said report, the city of Memphis hereby undertakes and agrees to rent from the Memphis Water Company not less than twelve (12) fire-hydrants, on an average for each mile of mains or main-pipes that may be laid down within the limits of the city, and as many more than twelve, on an average, for each mile of mains

or main-pipes as the city of Memphis by its general council may require.

2. But the city of Memphis does not rent nor agree to rent fire-hydrants on parallel mains laid closer to each other than one square, or three hundred and eighty feet, unless the city, by its general council, directs them to be laid closer.

3. And where the city rents hydrants on parallel mains, it does not agree to rent hydrants located on the mains laid across the
29[16] space between such parallel mains, unless the width of the space between the parallel mains on which the hydrants rented are located equals or exceeds two squares, or seven hundred and sixty feet; and, in this latter case, the city of Memphis does not agree to rent any hydrant placed nearer to the parallel mains on which the hydrants the city rents are located than one square or three hundred and eighty feet.

4. And the city of Memphis, by its general council, shall have the right to designate the particular places at which the hydrants the city agrees to rent shall be located; but the places for the erection of hydrants shall be designated by the city at such times and in such manner as not to impede or interfere with the laying by the water company of its pipes.

5. And the city of Memphis does not agree to rent more than two (2) hydrants on any main of a less diameter than five (5) inches.

6. The water company agrees to furnish all fire-hydrants, valves, and connections, and place them in position ready for use, and keep the same in good repair and working order, and shall also make connections with the public cisterns as rapidly as possible, and supply them with water free of charge; but the city shall keep the public cisterns in good repair.

7. The water company hereby guarantees that the hydrants shall throw twelve (12) streams, each stream to be from a one-inch nozzle, and through fifty (50) feet of hose, one hundred feet high; or eight (8) streams, each from an inch and a quarter nozzle, through fifty (50) feet of hose, one hundred and twenty-five (125) feet high; or from four (4) streams, each from an inch and a half nozzle, through fifty (50) feet of hose, one hundred and fifty (150) feet high.

8. The city of Memphis agrees to rent the said fire-hydrants as aforesaid, for the term of twenty (20) years from this date; and the city hereby agrees to pay the water company an annual rent, on each hydrant that it has agreed to rent, of one hundred and twenty-five dollars upon each one of the first one hundred (100) hydrants erected, and one hundred and twelve dollars and fifty cents ($112.50) upon each one of the second hundred (100) hydrants erected; and one hundred dollars
29[17] ($100.00) upon each one of the third one hundred (100) hydrants erected; and seventy-five dollars ($75.00) upon each hydrant erected over and above three hundred, (300.)

9. The rent shall be paid to the water company, semi-annually, at the end of each six (6) months, in money; and the renting shall not commence until the machinery has been accepted by the water company as in good working order, nor until the water company has established, by a practical test, that it is able to throw the several streams of water to the several heights hereinbefore specified.

10. And if at any time the water company shall be unable for a longer period than fifteen (15) days to throw the several streams of water to the heights above specified, then, and in every such case, the rent of the hydrants for such period or periods shall cease, and a rateable deduction shall be made from the several prices hereinbefore agreed to be paid, proportioned to the period of the inability.

11. Should the city purchase the water-works to be erected by the water company within the period of twenty (20) years, then this contract is from the date of such purchase to cease and be of no further effect.

12. Nothing in this contract is to be construed to exempt or discharge the water company from any duty or obligation to the city of Memphis, imposed upon it by its charter, but every such duty and obligation is to be performed and observed as if this contract had not been made.

Executed in duplicate, this the 18th day of January, 1872.

Witness the signature of the mayor, and the seal of the city of Memphis, and the signature of the president, and the seal of the Memphis Water Company, at the city of Memphis, at the above date.

[SEAL OF THE CITY OF MEMPHIS.] JOHN JOHNSON, *Mayor.*

Attest:
L. R. RICHARDS, *City Register.*

[SEAL OF WATER COMP'Y.] JOHN CUBBINS,
President Memphis Water Company.

Attest:
CHA'S J. PHILLIPS,
Sec'y and Treasurer.

29[18] STATE OF TENNESSEE, *Shelby County:*

Personally appeared before me, James Reilly, clerk of county court of said county, John Johnson, mayor, and John Cubbins, president of Memphis Water Company, the bargainers to the foregoing and hereto-attached contract, with whom I am personally acquainted, and who acknowledge that they executed the same for the purpose therein contained.

Witness my hand, at office, this 26th day of January, A. D. 1872.

[SEAL.] JAMES REILLY, *Clerk,*
By H. B. CULLEN, *D. C.*

29[19] The Memphis Water Company to F. S. Davis, T. R. Farnsworth, and James L. Worth.—Deed.

This indenture, made and entered into this 25th day of January, one thousand eight hundred and seventy-two, between the Memphis Water Company, a corporation duly chartered, organized, and doing business within the State and under the laws of Tennessee, party of the first part, and F. S. Davis and T. R. Farnsworth, of the city of Memphis, in the State of Tennessee, and James L. Worth, of the city of New York, in the State of New York, parties of the second part, witnesseth:

That for and in consideration of the sum of five dollars paid by the parties of the second part, the receipt of which is hereby acknowledged, and for other considerations hereinafter appearing, the said party of the first part has this day bargained and sold, and by these presents does grant, bargain, sell, and convey unto the said parties of the second part, all the franchises, rights, and privileges granted to the said party of the first part by the act of the legislature of the State of Tennessee, passed February 28th, 1870, incorporating said company, together with all the lands, houses, wells, pumps, machinery, pipes, and other property of said party of the first part, real and personal, now in possession of, and all which may hereafter be acquired by said party of the first part;

and also all the income which said party of the first part may
29[20] hereafter receive, acquire, or become entitled to, including all sums of money which the party of the first part may become entitled to receive from the city of Memphis under and by virtue of a contract made and entered into between the said city of Memphis and the said party of the first part hereto, on the 18th day of January, A. D. 1872.

And the said party of the first part does hereby covenant unto and with said parties of the second part, that it is lawfully seized of said charter, privileges, and franchises, and has good right to sell and convey the same. And further, that it has good right to sell and convey all the property and income to be by it hereafter acquired, and that none of the franchises, property, or income hereby conveyed is in any wise encumbered.

But this deed is made for the purposes and upon the trusts following, and none other, that is to say:

Whereas the said party of the first part, in order to raise money to be used in the construction of its works, in laying pipes, and in doing the other works necessary to put their water-works into full operation, have resolved, at a meeting of the directors held on the 25th day of January, 1872, to issue the bonds of the company to an amount not exceeding six hundred thousand dollars, which said bonds are to be numbered from No. 1 to 600, inclusive; are to be for the sum of one thousand dollars each; to bear date the first day of March, 1872, and to be payable on the first day of March, 1892, in gold at par, to bearer, with interest at the rate of seven per cent. per annum, payable in gold at par, free of United States Government tax, at the National Park Bank, of New York, in New York City, in the State of New York, semi-annually, on the first days of March and September of each and every year; the first instalment being payable on the first day of September, A. D. 1872, for which interest-coupons shall be attached; such bonds to be signed by the president and countersigned by the secretary of said company, and to be identified as the bonds secured by this deed, by a certificate thereon to that effect, signed by the parties of the second part hereto, and each of them. And the party of the first part being desirous to secure to the holders of said bonds, who may purchase the same, or advance money thereon, or hold the same for any lawful purposes, the prompt and certain payment of the interest
29[21] on said bonds as it may fall due, according to the coupon thereto attached; and also the prompt and certain payment of the principal of said bonds when the same shall become due and payable;

Now, to effect these objects this indenture is made, and the following agreements and stipulations are entered into:

First. It is expressly understood and agreed, that if the party of the first part shall promptly pay the interest on said bonds, at the times and places agreed on in the coupons aforesaid, and the principal on said bonds when they become due and payable, then this indenture is to become null and void, and the title hereinbefore conveyed is to revert and revest in the party of the first part, without any reconveyance whatsoever.

Second. Until default in payment of interest or principal of said bonds, the party of the first part is to have the full possession and control of all the franchises, privileges, property, and income hereby conveyed.

Third. Should the party of the first part make default in the payment of any instalment of interest on said bonds when the same becomes

due and payable, or of any part thereof, then the said trustees, or any two of them, may at once take possession of the office, books, and other property of the party of the first part, and shall collect and receive all moneys due or payable to said party of the first part, including all sums due or coming due to the party of the first part from the said city of Memphis, under the contract aforesaid, and shall apply the sums so received to the payment of any unpaid due interest-coupons until all such are paid, rendering any overplus by them received to the parties of the first part, and surrendering possession of such office, books, and property to the party of the first part so soon as through such receipts, or otherwise, all unpaid due interest-coupons shall be fully paid and satisfied.

Fourth. Should the said party of the first part make default in the payment of more than two consecutive instalments of interest, then the whole of the principal hereby secured, to wit, the said bonds, together with the interest thereon accrued, shall become and be due and payable, and at the request of a majority in interest of the bondholders, the parties of the second part shall take immediate
29½ possession of all the franchises, rights, privileges, and property hereby conveyed, and after the notice and publication of the same, in the manner and way hereinafter provided in the fifth clause or sub-division of this instrument, at the time and place mentioned in said notice, sell all the franchises, rights, privileges, and property hereby conveyed, to the highest bidder, for cash in hand, and convey and deliver the same to the purchaser, and the proceeds, after paying expenses of this trust, they shall apply to the payment of said bonds and of all interest thereon, rendering the suplus, if any, to the party of the first part or its assigns.

Fifth. Should the said party of the first part make default in the payment of the principal of said bonds at maturity, or of any part thereof, then the parties of the second part may, on being required so to do, by the holder or holders of any of said bonds, take immediate possession of all the franchises, rights, privileges, and property hereby conveyed, and first giving notice of the time, place, and terms of sale, by advertisement printed in two newspapers published in the city of Memphis, and two published in the city of New York, for sixty days daily before the day of sale, at the time and place mentioned in said notice, sell all the franchises, rights, privileges, and property herein conveyed, to the highest bidder, for cash in hand, and may convey and deliver the same to the purchaser, and the proceeds, after paying expenses of this trust, they shall apply to the payment of said bonds and of all interest thereon, rendering the surplus, if any, to the party of the first part or its assigns.

Sixth. In the event of the death, mental incapacity, removal, or resignation of either parties of the second part, the one or two remaining, as the case may be, shall have and exercise all the rights, powers, and duties hereinbefore conferred upon the three.

And in the event of the death, mental incapacity, removal, or resignation of all of the parties of the second part, then a majority in number and value of said bondholders may, by any writing under their hands, appoint one or more persons trustees hereof, who shall thereupon become vested with all the rights and be entitled to exercise all the powers conferred upon the parties of the second part by this indenture.

And in the event of a sale under this indenture, the party
29½ of the first part waives all equity of redemption which it may

have by the laws of Tennessee, and also waives the necessity of the parties of the second part giving bond and security for performance of this trust.

In testimony whereof the party of the first part has caused the seal of said company to be affixed hereto and this deed to be subscribed by its president.

And the parties of the second part have hereto set their hands, the day and year first above written.

[SEAL OF WATER COM'Y.] JOHN CUBBINS,
President of Memphis Water Company.

Attest:
CHA'S J. PHILLIPS, *Sec. & Treas.*

F. S. DAVIS.
T. R. FARNSWORTH.
J. L. WORTH.

Witnesses to signature of—
JAMES L. WORTH.
J. B. NONES.
W'M K. KITCHEN.

UNITED STATES OF AMERICA.

STATE OF NEW YORK,
City & County of N. Y., ss:

By this public instrument, be it remembered that on this twentieth day of February, A. D. one thousand eight hundred and [SEAL.] seventy-two, before me, the subscriber, Joseph B. Nones, a commissioner in and for the State of New York, appointed by the governor of the State of Tennessee. to take proof and acknowledgment of deeds, mortgages, letters of attorney, or any other instrument to be used or recorded in the State of Tennessee, and to administer oaths and affirmations, take depositions, etc., etc.. personally appeared James L. Worth, the person described in and who executed the annexed instrument, and acknowledged to me that he executed the same voluntary and freely, for the uses and purposes therein stated, as his free act and deed.

29½ And I further certify that I know the person who made the said acknowledgment to be the identical person described in and who executed the said annexed instrument.

In testimony whereof I have hereunto subscribed my name and affixed my official seal the year, month, and day first before written.

[SEAL.] J. B. NONES,
Commissioner of the State of Tennessee for the State of New York aforesaid, No. 91 Duane st., cor. Broadway.

STATE OF TENNESSEE, *County of Shelby:*

On this 24th day of February, 1872, before me personally came John Cubbins, the president of the Memphis Water Company, of the city of Memphis, with whom I am personally acquainted, who being by me duly sworn, said that he resided in the city of Memphis; that he was the president of the Memphis Water Company; that he knew the corporate seal of said company; that the seal affixed to the within instrument was such corporate seal; that it was affixed by order of the board of directors of said company; and that he signed his name thereto by the like order, as president of said company.

JOHN CUBBINS, *President.*

Sworn to and subscribed before me this 24th day of February, 1872.
[SEAL] J. M. BOOKER,
Notary Public for Shelby County, Tennessee.

STATE OF TENNESEE, *Shelby County:*

Personally appeared before me James M. Booker, notary public in and for said county, John Cubbins, president of the Memphis Water Company, F. S. Davis, and T. R. Farnsworth, the bargainors to the foregoing and hereto-attached instrument of writing, with whom I am personally acquainted, and who acknowledged that they executed the same for the purposes therein contained.

Witness my hand and notarial seal at office, this 24th day of February, A. D. 1872.
[SEAL.] J. M. BOOKER,
Notary Public in and for Shelby County, Tenn.

29[35] STATE OF TENNESSEE,
Shelby County:

I, James Reilly, clerk of of the county court of said county, do hereby certify that J. M. Booker, whose gennine signature appears to the hereto attached certificate of acknowledgment, is, and was at the time of signing the same, a notary public, duly commissioned and qualified in and for said county, and that all his official acts as such are entitled to full faith and credit.

Witness my hand and seal of office at office, this 26th day of February, A. D. 1872.
[SEAL.] JAMES REILLEY, *Clerk.*

STATE OF TENNESSEE,
Shelby County:

The foregoing instrument, with clerk's certificate and United States revenue stamps to the amount of five cents, was filed in my office for registration on the 26th day of February, 1872, at 1 o'clock p. m., and noted in note-book No. 7, page 117, and was recorded on the 29th day of February, 1872, in record-book No. 86, page 72 to 77.

JOHN BROWN, *Register,*
By J. C. BUSTED, *D. R.*

Fee, $3.25.

29[36] *The City of Memphis—Her population—Railroads—Business, etc.*

The present population of Memphis is from 63,000 to 65,000, which, at present ratio of increase, will embrace 100,000 within six years. She is at the head of perpetual navigation of the Mississippi River, and is thus the great distributing point for the rich sections of West Tennessee, Arkansas, North Mississippi, and Alabama.

She has twenty-eight miles of streets and alleys, of which thirteen miles are paved, chiefly with the Nicholson; about ten miles of street railroad; also, nine thousand eight hundred private dwellings, forty-two churches, fourteen hotels, and thirty-eight manufacturing establishments.

Receipts of cotton last year were 516,000 bales, valued at, say, $40,000,000, and ranking her third in importance among all the great cotton marts of the United States.

Her general business, aside from cotton, approximates $80,000,000 annually, and is steadily and satisfactorily increasing.

Her railroads at present in successful operation are the Memphis and Charleston, Memphis and Louisville, Mississippi and Tennessee, and Memphis and Little Rock, while the Memphis and Selma, Memphis and Paducah, and Memphis and Savannah are in rapid construction, and will soon be completed. These, with several other roads in contemplation, including the Memphis and Kansas City, Memphis and Vicksburg, Shreveport and Knoxville roads, clearly indicate that Memphis is destined to become one of the great railroad centres of the United States, as well as a cardinal feature of the great southern route to the Pacific.

30 *Notice of application for injunction.—Filed April* 23, 1872.

Messrs. T. E. BROWN & Co.:

GENTLEMEN: Please take notice that on Saturday, the 20th April, 1872, or as soon thereafter as may be, before the Hon. Noah H. Swayne, one of the justices of the Supreme Court of the United States, and ex-officio one of the justices of the circuit court of the United States for the district of West Tennesse, at his chambers in the city of Washington, D. C., or wherever he may be, the City of Memphis will apply for an injunction to restrain you from further proceeding to collect by execution a certain judgment for the sum of $488,993.00, which lately you obtained in the said circuit court, sitting in equity in the case wherein you were complainants by cross-bill, and the said city defendant; and especially from proceeding to sell the public property on which the marshal has pretended to levy, and the sale for which is advertised for the 23d and 24th days of April, 1872; and also from proceeding by garnishment to levy upon the taxes due the said city. The application will be made by bill this day filed in the said circuit court, a copy of which is herewith served.

31 Done at Memphis, Tenn., this the 15th day of April, 1872.

JOHN JOHNSON, *Mayor.*
W. M. RANDOLPH, *City Attorney.*

Endorsed as folllows:

"We acknowledge service of this notice and copy of the bill, April 16th, 1872.

"S. SIBLEY, *Att'y for Brown.*

"I also state, at request of the city, that I was advised and had a copy of the bill, exce't exhibits, as early as Saturday, the 13th; that such application would be made to Hon. C. F. Trigg, dist. judge; and on the 15th, yesterday, I had verbal notice that the application would be to the Hon. N. H. Swayne.

"S. SIBLEY, *Att'y for Brown.*"

On a certified copy of the bill above referred to is the following order of Judge Swayne, allowing the injunction:

Order.

I allow an injunction as prayed for in the bill, upon complainant giving bond in the sum of fifty thousand dollars, conditioned according to law, with sureties to be approved by the clerk, Andrews; the injunc-

32 tion to stand until the further order of the court or a judge thereof.

N. H. SWAYNE,
Asso. Justice Supreme Court U. S.

[APRIL 20TH, A. D. 1872.

33 UNITED STATES OF AMERICA,
District of West Tennessee:

We, acknowledge ourselves indebted to T. E. Brown in the sum of fifty thousand dollars.

The condition of this obligation is such, that whereas the said city of Memphis has filed a bill of complaint in the United States circuit court for the district aforesaid against the said T. E. Brown, and ha obtained an injunction therein:

Now, if the said city of Memphis shall pay all costs and damages that may be recovered against it in consequence of the suing out of said injunction, and shall abide by and perform the order, sentence, or decree of said court in said cause, then this obligation to be void; otherwise to remain in full force and effect.

Witness our hands and seals this 23rd day of April, 1872.

For the City of Memphis,	JOHN JOHNSON, *Mayor.*	[SEAL.]
[L. S. OF CITY.]	JOHN JOHNSON.	[SEAL.]
	JOHN B. ROBINSON.	[SEAL.]
	R. C. BRINKLEY,	[SEAL.]
	J. HALSTEAD.	[SEAL.]
	T. F. MACKALL.	[SEAL.]

Attest:
L. N. RICHARDS, *City Register.*

34 The within bond was affirmed and signed before me this 23d day of April, 1872.

H. E. ANDREWS, *Clerk.*

(Indorsed:) No. 170. Eq. circuit court of the United States, district of West Tennessee. The City of Memphis vs. T. E. Brown. Injunction bond. Filed 23d day of April, 1872. H. E. Andrews, clerk. d. clerk.

35 *Injunction.—Date April* 23, 1872

UNITED STATES OF AMERICA,
District of West Tennessee:

The President of the United States to T. E. Brown, his agents and attorneys, and all other persons, and especially the marshal of the said district:

You and each of you are hereby commanded to refrain from and are enjoined and restrained from proceeding any further in anywise, under or by virtue of an execution issued out of the United States circuit court for said district, on a decree therein in favor of said T. E. Brown and against said city of Memphis for the sum of $488,993, and especially from selling any of the property levied upon under said execution, and from otherwise in any way enforcing said execution, and from suing out any other writ of fieri facias, and from any and all proceedings to enforce the said decree by fieri facias, until the further order of this court, and this you will in nowise omit under the penalty of the law.

Witness the honorable Salmon P. Chase, Chief Justice of Su-
36 preme Court of the United States, this 4th Monday in November, 1871.

By order of the honorable Noah H. Swayne, associate justice of the Supreme Court of the United States and presiding judge of the 6th judicial circuit, made the 22nd day of April, 1872.

Attest, April 23d, 1872:

HORACE E. ANDREWS,
Clerk said Court.

(Endorsed as follows:) "Executed by reading the contents of this writ of injunction, this April 23d, 1872. L. B. Eaton. U. S. marshal."

37 *Answer.—Filed May 7, 1872.*

U. S. circuit court, dist. of West Tennessee.

THE CITY OF MEMPHIS
vs.
T. E. BROWN.

Comes the defendant, T. E. Brown, and saving all proper exceptions to the bill herein for its errors and insufficient allegations, for answer to so much thereof as he is advised it is proper or material to answer, says he admits it to be true that judgment was rendered in his favor as charged; and that plaintiff took an appeal therefrom, and gave a bond for costs only. This defendant is advised and believes there are no errors in such judgment whereof plaintiff can or ought to complain. Defendant admits the issue of execution and the levy thereunder by the marshal, on the property set out and described in Exhibit "C" and "D" to plaintiff's bill. This def't also admits the service of garnishments on certain persons, as supposed debtors of pl'ff, but whether they
38 are in fact indebted to plaintiff this defendant has no present certain means of ascertaining, and though he believed such persons generally were or would be so indebted, yet he is now informed that many of said persons will answer denying any indebtedness to pl'ff.

This defendant says it is true that he was informed and believes that several of said persons were indebted to pl'ff for real & personal property sold to them; that others were indebted, or would be prior to the next term of the said court, in certain sums due to pl'ff, by an ordinance of said pl'ff, as charges against them for the privilege of pursuing certain avocations in said city of Memphis; that a few only of such garnishees are indebted to plaintiff on account of general taxes levied on their property, sought by such garnishment, and not aggregating over about $60,000, and most of which is against two persons; that all the taxes and privilege-dues garnishe'd will not exceed $75,000, or thereabouts, and probably greatly less; that the total revenue collect-
39 ed by plaintiff in 1871 exceeded $600,000, and for the three first months of 1872 exceeded $230,000, about one-half of which sums were expended by pl'ff in its current expenses.

And defendant avers on information and belief that over and above said sums so garnishe'd the revenue of pl'ff is ample for its current expenses and payment of its interest on its debt with an economical administration of its affairs; and that the payment of such sum on defendant's debt will neither hinder, embarrass, cripple, or ruin said city of Memphis in the prudent and economical administration of its affairs,

but, on the contrary, the payment of such part of its just debt ought to be enforced out of its revenues, and would tend to advance its credit.

Defendant admits the two fire-engines levied on are two out of four of such engines owned by plaintiff & kept for use, but def't is informed & believes they are not all absolutely and indispensably necessary
40 for pl'ff's use, and so charges that none of such engines are necessary to the exercise of its franchise, or to the performance of its legally bounden duty to any or all its inhabitants; & that they are not public property, but the sole private property of the corporation pl'ff, which it has the absolute right to dispose of, irrespective of the will of any citizen. And def't is informed & believes the same facts in substance are true concerning the hose-carts & other appurtenances of said engines, and to the horses levied on as used for drawing such engines.

And def't admits the shares of the Memphis Water Company levied upon represent the plaintiff's interest in said company; and def't is informed & believes, & so charges, that said water company is a private corporation, or corporation for pecuniary profit, and that pl'ff occupies no other or different position therein than any other shareholder; that said pl'ff does not appear to own a controlling interest in said company; that said company is entirely independent of the city pl'ff;
41 that is neither the duty or privilege of said city pl'ff to construct or operate water-works; that it has no power to provide itself or its inhabitants with water by a system of water-works, but, on the contrary, such power was by the legislature of the State conferred on said Memphis Water Company exclusively; so defendant doth deny that plaintiff's ownership of said shares is in any way legally connected with the public good or the supply of water to itself or its inhabitants, or that the control of said water company by pl'ff is necessary that the people be not oppressed, or the sanitary condition of the city endangered, or its safety from conflagrations imperilled.

And, further, defendant avers he is informed and believes said water company has not yet commenced the construction of its works or the laying of its pipes.

And defendant admits that the four parcels of ground levied on, being the 2d, 3, 4, & 5 parcels described in Exhibit "C" to plaintiff's
42 bill, are used as and for engine-houses for the four engines of plaintiff, and while the same are convenient to pl'ff, yet def't is informed and believes they are in no proper sense necessary to the existence of said corporation or to the performance of its legal corporate duties.

And as to the parcel of land first described in said Exhibit "C," defendant upon information and belief denies that it or the building is used for engines or any purpose of the fire department, but that the building thereon is in part let out, and in part used as a miscellaneous store-room and stable by pl'ff, and is neither necessary nor used for public purposes in any proper sense of the term.

And as to all said first five parcels described in said Exhibit "C," defendant is informed and believes they have been conveyed by deed of trust by pl'ff to certain trustees, to secure the payment of $50,000, money borrowed by pl'ff in 1870, which loan bears interest at 10 per cent. per annum and is now due, and pl'ff has but an equity of redemption therein.

43 And as to the parcel of land with its appurtenances described in said Exhibit "C" as the Memphis navy-yard, def't is informed & believes that pl'ff in 1857 conveyed the same to trustees to secure the sum of $300,000 of the bonds of the Memphis and Little Rock Rail-

road Company, and pl'ff has only an equity of redemption therein, and that said debt will mature July 1, 1872, and said ground or its buildings are in nowise used by pl'ff for any public or corporate purpose, or held for the use or enjoyment of any corporate right, power, or privilege, & wherein no inhabitant has any right as in or to public property, but the same is leased for profit.

And def't admits the lot of ground levied on as "Exchange square" is covered by a block of brick buildings three stories high, twelve in number; in the parts of three of said building', above the first floor, the city pl'ff has its public offices. Defendant is advised that said city leased said lot about 185 for 99 years in consideration of the use of the
44 rooms now occupied by it in said buildings so long as it may choose to occupy them.

And concerning the other parcels of land levied on, the pl'ff only alleges generally that they with the others are not subject to sale, and are public property; but def't is informed and believes the same are subject to seizue and sale for the debts of said corporation, and are not such public poperty as is necessary to the existence and activity of said corporation or exempt to it, or necessary to the exercise of its charter rights orperformance of charter duties.

Defendant expressly denies all intent to wantonly harass plaintiff or injure it inhabitants; but he is advised and believes it is the determined policy of pl'ff to delay payment to def't till compelled thereto by process of law. The value of the work done is admitted by pl'ff, and the unpaid balance exceeds the amount of the decree. The amount even claimed by pl'ff as a credit thereon or set-off thereto is less
45 than *than* half the debt decreed due to def't. The pl'ff well knew defendant was largely indebted for money borrowed to carry on said paving contracts and had great need for the money so due to him, and def't has often importuned pl'ff during more than three years past to pay at least a part of said debt; yet pl'ff, disregarding its covenants and duty, utterly refused to pay any part thereof, or to provide any certain means for its future payment.

And defendant is advised & believes that pl'ff declined to give a supercedeas bond on its appeal, not because of its inability to do so, but because of its assumed sovereign exemption from execution process, & that it might obtain the possible reversal or modification of the decree without subjecting itself to the penalty for delay appeals, or its corporators to individual liability for its debt.

So def't is without security for his debt or its delay, and without process to enfore his decree therefor.

And def't denies any and all equity in pl'ff's bill. And con-
46 cerning the several matters hereinbefore set forth affecting the title to the property levied on, & for the subjection of the interest of pl'ff therein to sale, def't files herein his cross-bill.

And so def't prays the dismissal of the bill of pl'ff, the dissolution of the injunction herein granted, the assessment of his damages for the wrongful sueing out of such injunction, and for the relief prayed in his cross-bill.

And as in duty bound, &c.

S. SIBLEY,
Sol'r for Def't.

UNITED STATES OF AMERICA,
District of Iowa, ss:

Tallmadge E. Brown, being duly sworn, deposes and says he is de-

fendant in the foregoing answer named, and has read over said answer, and the matters and things therein set forth as of his own knowledge are true, and those charged as information and belief he believes to be true.

TALLMADGE E. BROWN.

47 Subscribed and sworn to before me this 3d day of May, A. D. 1872. In witness whereof I have hereto set my hand at Des Moines City, in said district.

S. S. ETHRIDGE,
U. S. Commissioner, District of Iowa.

Cross-bill.—Filed May 7, 1872.

TALLMADGE E. BROWN }
vs.
THE CITY OF MEMPHIS. }

Comes now Tallmadge E. Brown, and, humbly complaining to this honorable of the city of Memphis, shows to the court that he is a citizen of the State of Iowa and resident thereof, and that said city def't is a municipal corporation created by the laws of the State of Tennessee, and situate in said district. That pl'ff recovered a decree in this court of the November term, A. D. 1871, to wit, on the 19th day of March, A. D. 1872, for the sum of $488,993 and costs, for indebtedness accruing to plaintiff under certain paving contracts made by def't in 1867 and executed in 1867 & 1868; that execution thereon was ordered and issued by this court, and thereunder the marshal of said district levied on all the right, title, and interest of defendant
48 in and to all the property (with other) described in two advertisements of such levy and of sale thereof, which are hereto attached as Exhibits A and B, and made a part hereof, and to which reference is made for a particular description of the property herein sought to be subjected to sale for payment of plaintiff's debt; that hitherto def't filed its bill in this court and procured an injunction to issue against further proceedings by plaintiff to collect said decree by fieri facias, because of the matters alleged in said bill; that plaintiff has made answer to said bill, and now files this his cross-bill of and concerning the matters therein involved, and prays the city of Memphis may be made party defendant hereto and answer the same. And plaintiff is informed and believes, and so charges, that def't is the holder and owner of one thousand shares, of $100 each, of the capital stock of the Memphis Water Company, a corporation for private and pecuniary purposes, chartered by the legislature of the State of Tennessee, whose charter and contract with the defendant is set out in Exhibit F to the bill of complaint of def't, and to which reference is now here made for the terms thereof and the purpose of such company. And plaintiff is informed and believes and charges that said shares are personal property belonging to def't; that they are subject to be sold
49 by judicial process for the payment of the debts of defendant; that defendant as such shareholder has no other right thereto or interest therein than has any other shareholder in said company; that the total number of shares in said company's capital stock is two thousand; that the inhabitants of said city have no right to or interest in said shares so owned by defendant; that such shares are not held by defendant in the discharge of any corporate duty or in its public ca-

pacity as a municipal government; that said company has not yet begun the erection of its water-works; that defendant is in no ways now dependent thereon for water for any purpose; that defendant is dependent on its contract with said company and its charter for any supply of water hereafter furnished defendant by it, and not in anywise upon its ownership by defendant of said shares of stock, and neither in law or fact is such ownership of such shares necessary to be continued in def't for the exercise of any of its powers or performance of any of its duties, but that, on the contrary, defendant is prohibited by law from the erection and maintenance of water-works, and the exclusive right to erect and maintain water-works in said city is vested in said private company. So def't charges that said shares ought
50 to be decreed to be sold and the proceeds of such sale applied on plaintiff's said decree, and any sale thereof confirmed. And pl'ff is informed and believes, and so charges, that the indebtedness of A. J. Keller to def't, levied upon by garnishment under said execution enjoined, exists as follows: The defendant owns and holds two promissory notes made by Galloway, Hampton & Co., September 1st, 1866, to W. H. Bridges, as treasurer of the city of Memphis, each for the sum of $6,666.66, bearing six per cent. interest, and due, one in nine months after date and the other in eighteen months after date, and secured by lien on the real estate known as the "Avalanche building," in said city of Memphis, and which notes said Kellar assumed to pay off for a consideration. And plaintiff is informed and believes said promissory notes are made by parties well known and secured by realty well known in the business community of Memphis, and that said notes or any judgment or decree thereon would command and sell for their full, fair, and reasonable value on a public sale thereof; that promissory notes made by individuals are quite commonly bought and sold in the monetary market of the city of Memphis; that for plaintiff to collect such indebtedness by process of law under garnishment proceedings will involve much delay and expense to plaintiff, while to order the
51 sale of such notes will greatly benefit plaintiff without injuring defendant.

And plaintiff is informed and believes, and so charges, that the two fire-engines levied on and described in Exhibit B hereto, with the appurtenances thereto and horses used therewith, are two of four such engines owned by defendant; that said property so seized is not necessary to the performance of said city of its legal duties to its inhabitants; that the public has no claim in law to the said property or to its use, and that the same ought to be sold to satisfy plaintiff's debt.

And plaintiff is informed and believes, and so charges, that def't owns the five parcels of land, with the buildings thereon, which are particularly first described in Exhibit A hereto, subject, however, to a debt of $50,000 for money borrowed in 1870 and now past due; which debt is secured by a trust-deed of said five parcels of land and improvements, with power in the trustees to sell and convey the same to satisfy said debt, with ten per cent. interest thereon; that said property is worth more than said debt; that although the buildings on the first-described of said parce's were built and used for an engine-house, yet def't long since abandoned such use, and long since has offered the same
52 for sale; and although the buildings on the other four of such parcels are used for engine-houses, yet plaintiff charges as matter of law that they are not exempt property, but are subject to seizure and sale under judicial process, to satisfy plaintiff's said debt.

And pl'ff is informed and believes, and so charges, that the parcel of

land, with its appurtenances, described in Exhibit A as the Memphis navy-yard, as granted to the def't by act of Congress approved August 5th, 1854, is owned by defendant, subject to a trust-deed made by it in 1857, to secure the payment of $300,000 of the bonds of the Memphis & Little Rock Railroad Company, which debt is due July 1st, 1872; that said parcel of land is worth, with its appurtenances, more than said debt, and is not held or used by defendant for any public purpose or in the performance of any charter-duty, or as necessary to the exercise of any charter-right, and the interest of def't ought to be subjected to sale to apply on plaintiff's said debt. And plaintiff is informed and believes, and so charges, that the 9th and 11th parcels of land described in Exhibit A hereto, and which are known as the "North market" and the "South market," were acquired by purchase, and that the market-
53 houses thereon are cheap wood buildings of a single story height, and are held by the defendant corporation as a landlord to rent for gain or hire, and in no other sense or right than it may hold and rent buildings for any other lawful purpose, or than divers citizens of said city hold, use, or rent their own market-houses, whereof there are many in said city. That defendant has in law no monopoly of market-houses or markets; that said markets are not necessary to the performance by def't of any charter-duty or to the exercise of any charter-right in any other sense than that it has power under its charter to purchase and hold markets and market-houses, with other property, real, personal, and mixed, and has power to regulate and control any such property so owned by it.

And pl'ff is informed and believes, and so charges, that def't is the owner of the parcel of ground described in Exhibit A as lying between Charleston avenue and the Memphis and Charleston Railroad depot, and also of the last parcel of land described in said Exhibit A, being a part of lot twenty-two (22) of Garrett's sub-division, acquired by def't by purchase, and which are subject, upon the order of the court, to be
54 sold in satisfaction of defendant's debt.

And pl'ff asks that def't may answer the matters of this cross-bill and discover its title to all the said "South market," except the east 50 feet thereof fronting on Beal street, and that by proper orders and decrees all of the right, title, and interest of def't in and to each and all said parcels of land and personal property may be sold and the sales confirmed, and the proceeds applied after the payment of costs upon plaintiff's said debt, and that plaintiffs may have such other and further or different relief as shall seem equitable.

And, as in duty bound, he will ever pray, &c.

S. SIBLEY,
Sol'r for Pl'ff.

UNITED STATES OF AMERICA,
District of Iowa, ss:

Tallmadge E. Brown, being duly sworn, deposes and says he is plaintiff in the foregoing cross-bill, and has read the same, and the allegations therein made of his own knowledge are true, and that those made on information and belief he believes to be true.

TALLMADGE E. BROWN.

Subscribed and sworn to before me this 3d day of May, A. D. 1872.

S. S. ETHERIDGE,
U. S. Com'r, Dist. of Iowa.

55 Circuit court of the United States, district of West Tennessee.
No. 178, equity.

THE CITY OF MEMPHIS
vs.
T. E. BROWN } Bill.

AND

T. E. BROWN
vs.
THE CITY OF MEMPHIS. } Cross-bill.

Exhibit A to cross-bill.

U. S. MARSHAL'S SALE.

Circuit court of the United States, district of West Tennessee.

By virtue of an execution to me directed, issued out of the circuit court of the United States for the district of West Tennessee, in the above-entitled cause, commanding me to make out of the goods, chattels, land, and tenements of the city of Memphis the sum of four hundred and eighty-eight thousand nine hundred and ninety-three dollars, and interest, besides costs, adjudged to be due said T. E. Brown from said city of Memphis, for want of sufficient personal property wherefrom to make said sum, I have levied upon and will sell, to the highest bidder for cash, at the front door of the United States court-rooms, No. 450 Main street, in the city of Memphis, county of Shelby and State of Tennessee, on the 24th day of April, A. D. 1872, between the hours of ten o'clock in the forenoon and four o'clock in the afternoon, beginning at ten o'clock in the forenoon, the following described real estate, and all the right, title, and interest of the city of Memphis therein, or in the buildings or appurtenances thereto belonging, situate in the county of Shelby and State of Tennessee, viz:

Part of lot No. 270 in the plan of Memphis, described as follows: Beginning at the intersection of the east line of the alley between Main and Second streets, on the south side of Poplar street, and running thence east along Poplar street twenty-five (25) feet; thence south seventy-four (74) feet and three (3) inches; thence west to the east line of said alley; thence north along said alley to the place of beginning.

Also, part of lots 263 and 264 in the plan of Memphis, described as follows: Beginning at the intersection of the north line of Adams street with the west line of Second street, running thence north on the west line of Second street one hundred and forty-eight (148) feet and six (6) inches to an alley; thence west along said alley thirty-seven (37) feet and one and a half (1½) inches to McKeon's east line; thence south one hundred and forty-eight (148) feet and six (6) inches to Adams street; thence east along Adams street to the place of beginning.

Also, part of lot two (2) in block fifty-one (51) in South Memphis, described as follows: Beginning at a point on the east side of De Soto street, three hundred feet from the southeast corner of Beale and De Soto streets, running thence south along De Soto street twenty-seven (27) feet; thence eastwardly parallel with Beale street one hundred and fifty (150) feet; thence northwardly parallel with De Soto street twenty-seven (27) feet; thence westwardly parallel with Beale street to the place of beginning.

Also, part of lot No. one hundred and forty-five (145) in the plan of Memphis, described as follows: Beginning at the southeast corner of said lot; thence northwardly along Main street twenty-five (25) feet; thence westward at right angles with Main street fifty-five (55) feet; thence southwardly parallel with Main street twenty-five (25) feet to an alley; thence eastwardly to the place of beginning.

Also, lot No. three (3) in block seventeen (17) in the plan of South Memphis, said block lying on the west side of Shelby street and between Gayoso and Hotel streets, and said lot being twenty (20) feet on Shelby street by seventy-five (75) feet in depth.

Also, the first block of ground lying east of lots Nos. 329 and 330, on the original plan of Memphis, north of Poplar streets, being one hundred and forty-eight and one-half (148½) feet square; the same being situate on the northwest corner of Poplar and Third streets.

Also, all that tract of land and all and singular the appurtenances thereunto belonging, ceded by the United States to the city of Memphis by act of Congress approved August 5, 1854, and described therein as the Memphis navy-yard, and which tract of land is known and described on the maps of the city of Memphis issued by E. W. Rucker and by Todd & Crider as "United States naval depot."

Also, that parcel of ground in the city of Memphis described on the plan of said city as "Exchange square," and all and singular the buildings thereon and appurtenances thereunto belonging.

Also, a tract of land bounded as follows: On the east by Hernando street; on the south by Beale street; on the west by a lot owned by Augustus Berton, and on the north by a line parallel with Beale street and one hundred and fifty feet north of the north line of Beale street, designated on the map of Memphis by M. T. Williamson as "South Market," parcels whereof are more particularly described as follows: Beginning at the point of intersection of the north line of Beale street with the west line of Hernando street; thence running west on the north line of Beale street fifty (50) feet; thence northerly on a line at a right angle with Beale street one hundred and fifty (150) feet; thence easterly parallel with Beale street fifty (50) feet; thence in a direct line southerly to the place of beginning. Also, a parcel west of and adjoining the last described parcel, commencing at a point of the north line of Beale street, fifty feet west of the west line of Hernando street, and running thence westerly along the north line of Beale street to the west line of a lot owned by Augustus Berton, about one hundred and eighty feet, more or less; thence north along the east line of said Berton's lot one hundred and fifty (150) feet; thence east on a line parallel with Beale street to the northwest corner of the tract last above described; thence south to the place of beginning.

Also, a parcel of land extending from Court street northward to Adams street, lying east of Charleston avenue and west of the Memphis and Charleston Railroad depot, being thirty-eight feet, more or less, from the east line of Charleston avenue eastward in width from Court to Jefferson street, and diminishing in width from Jefferson street northward to Adams street, where it is thirteen and one-half (13½) feet in width, more or less.

Also, part of large lot No. 499 in the plan of Memphis, described as follows: Beginning at a point on the north line of Washington street eighty (80) feet westerly from the old boundary-line between William Yates and Cheek's land, running westerly along the north line of Washington street two hundred and ninety-two (292) feet, more or less, to the eastern bank of Bayou Gayoso, as now straightened; thence northerly

along the east bank of the said bayou to the south line of Poplar street; thence easterly along the south line of Poplar street three hundred and ten (310) feet, more or less, to a point eighty (80) feet westerly from the boundary-line between Yates and Cheek; thence southerly in a direct line to the place of beginning, being the same land described in the conveyance of Meredith Yates, James Elder, and D. R. Cook to the city of Memphis, recorded in book 37, pages 405 and 406, in the register's office. All the foregoing parcels lying within the corporate limits of the city of Memphis.

Also, a tract of land containing fifteen acres, more or less, being a part of lot twenty-two (22) of Garrett's sub-division, and described as follows: Beginning at a point north sixty-one degrees east from the east line of Springdale avenue, six (6) chains and fifty-nine (59) links, being twenty-five (25) links north of the center of the Memphis and Ohio Railroad; running thence north twenty-seven (27) chains and thirty-seven (37) links; thence east five (5) chains and seventy-six (76) links; thence south twenty-four (24) chains and sixty-nine (69) links to said railroad; thence westwardly along said railroad six (6) chains and fifty-two (52) links to the place of beginning.

ap3

L. B. EATON,
United States Marshal.

56 *Exhibit B to cross-bill.*

U. S. MARSHAL'S SALE.

In the circuit court of the United States for the district of West Tennessee.

T. E. BROWN
vs.
CITY OF MEMPHIS. } 147. E. Cross-bill.

By virtue of an execution in the above-entitled cause, directed from the court aforesaid, now in my hands, commanding me to make the sum of four hundred and eighty-eight thousand nine hundred and ninety-three ($488,993) out of the goods, chattels, lands, and tenements of the said defendant, The City of Memphis, I have levied upon as the property of said city, and will sell to the highest bidder for cash, on Tuesday, 23d day of April, A. D. 1872, at 10 o'clock a. m. on said day, the following described property, to wit: One thousand shares of the capital stock of the "Memphis Water Company," each share being for the sum of one hundred (100) dollars, the sale of which will be at the front door of the U. S. court-room, No. 450 Main street, in the city of Memphis, Tennessee.

Also one rotary steam fire-engine, No. 4, called the "Washington," one tender or coal-cart, one hose-carriage, about 800 feet hose, one
57 brown horse and harness therefor, two large bay horses and double harness for same, one large iron pump, being the steam fire-engine, appurtenances, and horses now at the engine-house situated on Main street between Market and Winchester streets, at which place said property will be sold between the hours of 10 o'clock a. m. and 4 o'clock p. m. of the day aforesaid.

Also one steam fire-engine called "Valentine No. 2," made by A. B. and E. L. Slater, Cincinnati, Ohio, one tender or coal-cart, and one hose-carriage and harness therefor, one mouse-colored horse, one dark-

bay horse, and three blood bay horses, and two double sets of engine-harness, about 800 feet of hose; the same being the fire-engine, appurtenances, and horses now situate at the engine-house on Shelby street, between Goyoso and Hotel streets, at which place said property will be sold on the day aforesaid, between the hours of 10 o'clock a. m. and 4 o'clock p. m.

L. B. EATON,
U. S. Marshal.

58 The President of the United States to the marshal of the district of West Tennessee, greeting:

You are hereby commanded to summon the City of Memphis, citizen of the State of Tennessee, if it be found within your district, to appear before the judge of the circuit court of the United States in the sixth circuit for the district of West Tennessee, at Memphis, on the 4th Monday in May next, and then and there to answer T. E. Brown of a plea in equity by cross-bill to the bill of complaint of said city against said T. E. Brown, now pending in said court. Herein fail not, and have you then and there this writ.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, at Memphis, the 4th Monday of November, 1871.

[L. S.] H. E. ANDREWS, *Clerk.*

Dep. Clk.

Know all men by these presents, that T. E. Brown held and firmly bound unto H. E. Andrews in the sum of two hundred and fifty dollars, to be void on condition that T. E. Brown do pay and satisfy all costs that may accrue in that behalf in the prosecution of a suit this day commenced by him in the circuit court of the United States for the district of West Tennessee, at Memphis, against said city of Memphis on failure of the plaintiff to prosecute his said suit with effect, and also on failure of the defendant, if convicted, to pay said costs; and we agree that judgment on motion, without notice, may be rendered against us for the same.

Witness our hands and seals this 25th day of April, 1872.

T. E. BROWN. [SEAL.]
W. Y. C. HUMES. [SEAL.]

59 (Indorsed:) No. 170. vs. The City of Memphis.
Summons. Cross-bill. Issued 25th day of April, 1872.
, clerk. , D. C.

Came to hand 25th April, 1872. Executed by making known contents and delivering a copy of this summons to John Johnson, mayor of the city of Memphis, this 26th day of April, 1872.

L. B. EATON,
U. S. Marshal.
S. J. ATLEE,
Deputy.

60 *Answer to cross-bill.*

In the circuit court of the United States for the district of West Tennessee. In equity.

THE CITY OF MEMPHIS
vs.
T. E. BROWN. } Bill.

AND

T. E. BROWN
vs.
THE CITY OF MEMPHIS. } Cross-bill.

The City of Memphis, for answer to so much of the cross-bill of the said T. E. Brown as it is advised it is material or proper for it to answer, says:

Respondent admits it is a municipal corporation chartered by the State of Tennessee, and for its powers, duties, and purposes it refers to its charter and the several statutes amendatory thereof, and the other statutes of the State of Tennessee so far as they have relation to
61 it, and pray that they may be taken and considered as a part of this answer.

Respondent admits that the plaintiff, about the day stated in the cross-bill, recovered in this court a decree against respondent for about the amount stated; but, for certainty and particularity in respect to the said decree, respondent refers to the same now remaining of record in this court.

For the particulars of the demands made by the plaintiff of respondent, and forming the basis of the said decree, respondent here refers to the record and proceedings in the suit in which the said decree was rendered, and prays that the same may be taken as a part of this answer.

Respondent admits that a writ of execution was ordered and issued upon the said decree, and that thereunder the marshal of the United States for the district of West Tennessee has levied upon the property described in the exhibits to the original bill, but for more particularity and certainty, and for a description of the property
62 so levied on, respondent here refers to the return of the marshal on the said writ of execution when made and filed in court here, and prays that the same may be considered as a part of this answer.

Respondent also admits that it filed its bill and procured, by the order of the Hon. N. H. Swayne, one of the judges of this court, a writ of injunction to issue, restraining further proceedings by the plaintiff under the said writ of execution and the levy thereof, and for the contents of the said bill, the fiat for the injunction, and the injunction, respondent now refers to the same as they remain of record in this court.

Respondent also admits the filing of the plaintiff's answer to the said bill:

Further answering, respondent admits it is the owner of a one-half interest in the Memphis Water Company, a corporation whose object is the supply of water to the city and its inhabitants, as set out in
63 its charter, which is a public law, and which is here referred to as a part of this answer.

The said one-half interest is represented by one thousand shares of

the capital stock of the company, of the nominal value of one hundred dollars each, of which respondent is the owner and holder. The interest of the city was acquired in the manner and for the purposes stated in its bill and Exhibit "F" thereto, and the statements of the bill and the said exhibit are hereby adopted as parts of this answer.

Among the powers inherently belonging to respondent as a municipal corporation, and specially conferred upon it by its charter, is the power to supply itself and its inhabitants with water sufficient for public and private purposes. With a view of executing this power, which respondent is advised was incumbent upon it as a duty, and not having the power to erect water-works for the supply of water, as decided by the supreme court of the State of Tennessee, because the exclusive
64 right to erect water-works was vested by the legislature in the Memphis Water Company, respondent, as another mode of providing the necessary supply of water for itself and its inhabitants, acquired the half-interest in the Memphis Water Company, or the one thousand shares of stock, in the manner before stated. At the time respondent so acquired the said interest, or stock, it was generally understood and believed, and respondent charges the fact was so, that the Memphis Water Company could not erect its water-works if the city refused to become interested.

And in no other way was it in the power of respondent to furnish itself and its inhabitants a certain and sufficient supply of pure water.

And respondent is advised, and charges, that it is absolutely necessary to the proper execution of its power to supply itself and its inhabitants with water that respondent should retain the interest or stock it now holds in the Memphis Water Company, and the
65 control and direction of the company that the holding of such stock or interest gives respondent; and that the sale of respondent's said interest or stock would effectually paralyze respondent in its efforts to carry into execution the said power to supply water.

Respondent also acquired the said interest or stock in the water company with the design of ultimately becoming sole owner of the franchises and property of the company, as provided in section eleven (11) of the company's charter, in which event the cost of the same, if respondent is half owner, will be only half what it would otherwise be.

Respondent is further advised that it could lawfully acquire the said interest or stock only because it was for a corporate purpose, and that it now holds the same in trust for the public which it represents, and that the same cannot be sold voluntarily nor under legal compulsion.

Respondent also states and shows that the comfort, health, and prosperity of its inhabitants will be greatly promoted by securing a
66 plentiful supply of water, as contemplated, and that the safety of the property of the city and its citizens depends greatly upon the same being done.

And respondent here sets up the act of the legislature of the State of Tennessee, passed and approved July, 1870, entitled "An act to exempt from execution or attachment the property of municipal corporations," as a protection against the sale of its interest or stock in the said water company.

Respondent also pleads and insists that the said interest or stock is not the subject of sale under execution from this court, and cannot be subjected to sale.

Respondent says that the water company has commenced the erection of its water-works, and will soon be able to supply the city and its inhabitants water sufficient for all needful public and private purposes,

if not impeded by the threatened sale of respondent's said interest or stock.

Respondent never did pay one dollar for its said interest or stock
67 in the said water company, but the same was given it by the water company, as appears in the contract in Exhibit "F" to the bill. And the contract by which the water company gave respondent, as the representative of the public, the said interest or shares of stock, and the contract by which respondent agreed to pay for so many hydrants, were one and the same, and wer' made for the sole purpose of procuring and securing for the future an adequate supply of water for the city and its inhabitants.

It is true respondent is not yet dependent on the water company for a supply of water, for it has no supply, and it was in consideration of that fact, and because of a necessity felt by the public, as well as by the city's officers, that respondent took the steps it has taken to procure a supply.

Respondent, answering as to the indebtedness of A. J. Kellar to respondent, which the cross-bill alleges has been garnisheed by the plaintiff on the execution aforesaid, says it has a suit pending in the
68 second chancery court of Shelby County, for the purpose of recovering of Gallaway, Hampton & Co., and others, two promissory notes due by them to it, each for about $6,666.66, and for the enforcement of a lien on certain real estate for the payment of the said notes.

To the said suit, and its record and proceedings, respondent here refers.

Respondent is advised that the said indebtedness, in consequence of the said suit, and because it is exempt by law, is not subject to garnishment.

But long before the plaintiff caused the garnishment of the said indebtedness, as he states, one Evans Rogers, in a suit now pending in the second chancery court of Shelby County, caused the same to be attached, or sequestered, for the purpose of satisfying sundry judgments he had recovered against respondent, which remained unsatisfied.

By virtue of the said suit, the said second chancery court of Shelby County has acquired the custody and control of the said indebted-
69 ness, which is the same that the plaintiff charges to be the indebtedness of the said A. J. Kellar, and this court cannot now take cognizance of the same.

To the record and proceedings in the said suit of the said Rogers, copies of which will be produced on the hearing, if required, respondent now here refers as part of this answer.

Respondent denies that the said notes are made by parties of such credit or known solvency, or are secured by real estate of such known value, as to give them a value in the market anything like equal to their face; on the contrary, if sold, they will realize but a small part of what they call for, and will involve a great sacrifice to respondent.

And besides, respondent denies that the court has any power to order the sale of such securities as the said notes.

Respondent avers that the two fire-engines levied on under the said execution are absolutely necessary to enable respondent adequately to protect its property and the property of its inhabitants from fire.

70 Respondent admits that there is a deed of trust upon the ground on which its fire-engine houses stand, to secure a debt due from it of $50,000, which deed of trust remains unsatisfied.

For the particulars of the said deed respondent refers to the same, when produced, as to a copy.

The said parcels of ground are absolutely necessary as locations for the said engine-houses, and cannot be dispensed with.

Respondent admits that the said property is worth more than the said $50,000, but does not believe it can be sold for that much if sold at a forced public sale.

One of the said engine-houses is not now used for the keeping of an engine, but it is used for city stables and other necessary purposes of respondent, and at any time respondent may be required to put and keep an engine there.

71 Respondent has not made any formal offer to sell the said engine-house, though if it had, plaintiff could not be benefitted by that fact.

All the said engine-houses and the ground are exempt from sale by execution, and the plaintiff has no right to ask a sale.

As to the property known as the "navy-yard" property, mentioned in the cross-bill, respondent says that much the larger part of it was dedicated to the public as public ground, under the designation of "promenade" and "public landing," by the original proprietors of the ground whereon Memphis stands.

The confirmation of the dedication appears by the deed filed with and as a part of respondent's bill, and marked "Exhibit E," which is here referred to, and is made a part hereof.

The part of the said "navy-yard property" so included in the "promenade" and "public landing," will be designated on or before the hearing, or sooner if required.

72 Respondent denies that its grant of the said property so dedicated to the United States, and the return of the same by the United States to respondent, could affect the original dedication, or divert the said property from the uses for which it was set apart as aforesaid; but avers that the same remains in the public for the purposes indicated by the dedication. And the said part of the said property so dedicated is not subject to sale under executions against respondent.

And the said property so dedicated, and the residue of the said navy-yard property, is subject to a mortgage or trust-deed to secure $50,000 of the bonds of the Memphis and Little Rock Railroad Company, which mature on the 1st day of July, 1872. To the said deed of trust, or a copy, respondent here refers, and prays that the same, when produced, may be taken as a part of this his answer.

The said "navy-yard property," as respondent believes and avers, will not, if sold, sell for enough to pay said mortgage debt.

73 But the said "navy-yard property," like all the other property respondent holds, is held for the public, and is necessary for the public, and is exempt by law from sale under an execution against respondent.

The said parcels of ground on which respondent's market-houses are located are absolutely necessary to enable it to carry out the power "to establish and regulate markets, and pass market laws and regulations," and are used exclusively for the purpose of carrying out the said power; and so, like the other property, are exempt by law from sale by execution against respondent.

The ground on Charleston avenue has been dedicated and set apart, and is used as a public square, or common, by all the inhabitants of the city, and the city has no such interest in it as subjects it to sale under execution.

The tract in Garrett's sub-division on the Memphis and Ohio Railroad

was purchased by respondent in the year 1860, for the purpose of
74 locating upon it a "Home for the homeless," and it is now held and used for the said purpose. It was included in a deed of trust, of record in the office of the register of Shelby County, in book No. 65, pages 491–494, whereby respondent secured the payment of a large amount of money owing by it. The said tract of land was also sold by the United States direct tax commissioners, for the payment of the direct tax levied under the act of Congress passed in the year 1861, and is now claimed, as respondent is informed, by H. E. Andrews, under the said purchase. Respondent has no interest in the said tract of land that is subject to execution at law, or to sale under a decree in equity, for the payment of its debts.

For further answer to the matters of the said cross-bill, respondent here adopts and reiterates the allegations of its bill so far as they relate to the matters of the said cross-bill, and pray that they may be taken as a part of this answer as if herein verbally incorporated.

75 Further answering, respondent says that all the property mentioned in the cross-bill, while necessary to respondent to enable it properly to execute the powers vested in it as a municipal corporation, and hence of great value to it for the said purposes, if sold under execution would produce a very small sum of money, and would benefit the plaintiff very little, if at all.

Recognizing the fact just stated, the plaintiff has given respondent notice that he will apply at the present term of the court for a writ of mandamus, compelling respondent to levy a tax sufficient to pay the said judgment; and in his petition for the mandamus the plaintiff states that all the property levied on under the execution against respondent "will not pay any considerable part of said debt; that the property levied on to which respondent has the legal title and which is subject to execution sale will not sell for a sum exceeding $50,000, and that he knows of no other property of the respond-
76 ent of any considerable value, of more than $1,000 value, whereon to levy."

Respondent therefore charges that the said plaintiff has caused the said levies to be made, and is prosecuting his cross-bill, not with a view in good faith of obtaining satisfaction of his said decree, but for the sole purpose of annoying, vexing, harassing, and embarrassing respondent in its government of the city and its inhabitants, hoping thereby to force respondent to abandon the appeal from the said decree which it has taken to and is prosecuting in the Supreme Court of the United States, and to compel it to compromise or pay the amount of the said decree before the said appeal can be heard.

Respondent states that it is advised and believes that it has good grounds for the said appeal, and that it has good reason to hope, and does hope, that the said decree will be reversed entirely, or greatly reduced by the Supreme Court of the United States when the same is heard.

77 Respondent is not prosecuting the said appeal for the purposes of vexation or delay, but in good faith and for the purpose of obtaining justice.

Respondent, so soon as the said appeal is determined, will at once pay, as soon as it possibly can, any sum that may be decreed to be due the plaintiff. And until the said appeal is determined the plaintiff has, as security for his debt, all the taxable property in the city, which is sufficicent to pay many times the amount of it, and as compensation for the delay, will receive interest at the rate prescribed by law on the

amount that may be decreed him, and damages if he may be entitled to them.

Respondent therefore charges that the conduct of the plaintiff in attempting to enforce the said decree by the means and in the manner aforesaid is oppressive, and submits that the remedy by mandamus to compel respondent to levy a tax sufficient to pay the said decree, to which respondent has resorted as aforesaid, is adequate and complete for all just purposes, and dispenses with the necessity
78 of further proceedings under the said executions or the levies thereon and under the cross-bill.

Respondent having fully answered the said cross-bill, now demurs thereto, and prays the benefit of this, its demurrer, as if the same had been interposed separately, and assigns as causes of demurrer that there is no equity on the face of the cross-bill; that it is multifarious; that it shows other persons, not before the court, have interests and are necessary parties; and that the subject-matter of the bill is not of equity cognizance.

And respondent prays that the cross-bill may be dismissed, and that it may have the relief prayed in the original bill, and other proper relief.

JOHN JOHNSON, *Mayor.*

Attest:
L. R. RICHARDS, *City Register.*

79 *Replication to answer to cross-bill.*

T. E. BROWN
vs.
CITY OF MEMPHIS. } Cross-bill.

The replication of T. E. Brown, compl't in this cross-bill, to the answer of The City of Memphis to said cross-bill.

This repliant, saving and reserving unto himself now and at all times hereafter all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto, says that he will aver, maintain, and prove his said bill of complaint to be true, certain, and sufficient in law to be answered; and that the said answer of defendant is uncertain, untrue, and insufficient to be replied unto by this repliant without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed, or avoided, traversed, or denied, is true. All which matters and things this repliant is and will be ready to aver, maintain, and prove, as this honorable court shall direct; and humbly prays as in and by his said cross-bill he has already prayed.

S. SIBLEY,
Complainant's Sol'r.

80 *Amended bill.—Filed June* 17, 1872.

In the circuit court of the United States for the district of West Tennessee.

CITY OF MEMPHIS
vs.
T. E. BROWN. } Bill.

T. E. BROWN
vs.
CITY OF MEMPHIS. } Cross-bill.

The City of Memphis, by leave of the court first had, amends its original bill herein by incorporating therein the following allegations:

That the property in Garrett's sub-division on the Memphis and Ohio Railroad was acquired by it, under and in pursuance of the proceedings of its board of mayor and aldermen, a copy of which, certified by its register, is filed with and as a part of this amendment, and is marked Exhibit "M." The said property was conveyed to the plaintiff as trustee for the association named in the said proceedings, to be used for the purposes therein specified, under the power in its charter, by which it "is declared capable of taking and holding property, real, personal,
and mixed, both within and without the city limits, given, or to
81 be given, to be applied to charitable purposes, and of executing
all such charity trusts in like manner as natural persons." Since the said property was purchased and conveyed to the plaintiff it has been in the use or occupation of the said association known as the "Home for the Homeless," for the purpose "of affording aid and assistance to some extent to the destitute poor and outcast of the city, by providing a temporary home for them," and, so far as the plaintiff knows or believes, it has never been used for any other purpose. Since the purchase of the said ground the association known as the "Home for the Homeless" has been chartered by the legislature of the State of Tennessee, by chapter 44 of the private acts of 1865, '6, page 167, and it is now a corporation.

The objects and purposes of the said corporation, "The Home for the Homeless," are set out in the printed report filed with and as a part of this amendment, marked Exhibit N. In respect to the ground on Charleston avenue levied on by the marshal, and mentioned in his notice of sale, the plaintiff says it was purchased or acquired by it under the power given in its charter "to purchase, receive, and hold property
both within and without the limits of the city, for the purpose
82 of public squares and parks, and to make such improvements
thereon from time time as its general council may deem necessary," and that the plaintiff holds the title to the same for a public square or park by the express provision of its charter.

The plaintiff has never devoted or used the said piece of ground for any purpose except as a public square or park. It is now lying open as a common, and has been for some years. But the plaintiff once, about the years 1864 or 1865, planted trees upon it, enclosed it with a fence, and put a curb around it which remains there at present, and long before that time, by unmistakable acts as well as by declarations and resolutions of its board of aldermen, one of which is filed with and as a part of this amendment, and is marked Exhibit O, it had set apart and dedicated it for a public square or park.

And the plaintiff is advised that the public by such dedication has acquired a right to the said ground for the said purpose, and that the plaintiff has no power, even if it desired to do so, to make the dedication or divert the said lot from the said purpose.

In testimony whereof the mayor has hereto signed his name
83 and *and* has affixed the seal of the city this the 17th day of June, 1872.

[L. S. OF THE CITY.] JOHN JOHNSON, *Mayor.*

Attest:

L. N. RICHARDS, *City Register.*

Exhibit "M" to amended bill.

Extracts from proceedings of the board of mayor & aldermen of the city of Memphis, as per official record in city register's office.

(Book X, page 159, Sept. 15, 1860.)

The petition of the ladies organization for a "Home for the Homeless," asking the board to purchase a 15-acre tract of land belonging to John H. Brinkley for that purpose, was referred to a special committee composed of Aldermen Frasier, Malloy, and Merrill, under the following resolution offered by Ald. Frasier, which was adopted by the board:

Resolved, &c., That a committee of three be appointed to report what aid, if any, shall be granted by this board towards the establishment of a "Home for the Homeless," and report an ordinance embodying their views at the next meeting of this board.

(Page 176, Oct. 16, 1860.)

The following report was received and adopted from the special committee:

To the hon. board of mayor and aldermen:

84 GENTLEMEN: Your committee, to whom was referred the resolution as to the aid, if any, to be given by your honorable body to the association known as the "Home for the Homeless," would report: That the association was formed by ladies of your city, for the purpose of affording aid and assistance to the destitute poor and outcast of your city, by providing a temporary home for them, with proper regulations and restrictions, proposing after once started on their benevolent enterprise to make the institution pay all current expenses. Your committee applaud and approve the motive, and are disposed to recommend aid for the furtherance of the undertaking. They have examined the land proposed to be sold by John H. Brinkley as a location for the institution, which was also referred to your committee. The land is well situated and adopted for this use, being about three miles from the city, containing 15 acres, with a frame house of four rooms and hall, lathed and plastered, good well, stable, kitchen, &c. It is on the line of the Memphis and Ohio Railroad, and about three hundred yards from the new Raleigh road. Mr. Brinkley offers it for the sum of $7,000:
85 $1,500 in cash, $1,500 by credit on the city's books, $2,000 in 8 months without interest, and $2,000 in 24 months with interest. Your committee think this a reasonable price for the place, and recommend its purchase by the city; but in such manner as in the event the enterprise fails, the property so purchased shall revert to the city. Your

committee understand that the association are satisfied with the place, and will proceed at once to active duty in the event it is purchased.

C. W. FRASIER, *Cha'rm'n.*
D. B. MOLLOY.

(P. 177, Oct. 16, 1860.)

By Ald. FRASIER:

Be it ordered &c., that the committee on contracts be, and they are hereby, authorized to close a contract with John H. Brinkley for the purchase of the 15 acres of land for the Home for the Homeless, in accordance with the report of the committee appointed in that behalf, and that the mayor is hereby authorized to execute the bonds of the city as required in said purchase. (Adopted, 1st reading.)

(Page 195, Nov. 7, 1860.)

Adopted on second and final reading.

This is to certify that the above and foregoing *are* is a true and
86 perfect extract, copied from the recorded minutes of the board of mayor and aldermen of the city of Memphis.

In testimony whereof I, Lewis R. Richards, city register and keeper of the records and seal of the city of Memphis, have hereunto set my hand and affixed said seal June 13th, A. D. 1872.

[L. S. OF CITY.] L. R. RICHARDS, *City Register.*

86[1] EXHIBIT N.

First annual report of the board of managers of the Home for the Homeless, with the constitution and by-laws.

[For the poor shall never cease out of the land; therefore I command thee, saying: Thou shalt open thy hand wide unto thy brother, to thy poor, and to thy needy in the land.—*Deut.*, 5 *ch.*, 11 *v.*]

Memphis: Saunders, Clark & Norton, book and job printers, 15 Madison street, opposite Union Bank. 1862.

86[2] OFFICERS.

President.—Mrs. J. C. Johnson.
Vice-president.—Mrs. M. E. Houston.
Treasurer.—Mrs. G. P. Foute.
Recording secretary.—Miss Mary Bayliss.
Corresponding secretary.—Mrs. Jas. M. Keller.
Managers.—Mrs. M. C. Galloway, Mrs. E. H. Porter, Mrs. N. S. Bruce, Mrs. W. B. Greenlaw, Miss Phœbe Frazier, Mrs. Col. Mills, Mrs. Dr. Edmonds, Mrs. Capt. Wray, Mrs. Minor Merriweather, Mrs. S. M. Gonder, Mrs. Sarah A. Means, Mrs. W. B. Miller, Mrs. H. T. Hulbert, Mrs. W. S. Vernon, Mrs. Jas. M. Keller, Mrs. Jas. Flaherty, Mrs. A. J. Donaldson, Mrs. C. H. Starke, Mrs. C. J. Selden, Mrs. T. W. Beauchamp, Mrs. John Trigg, Mrs. Col. Manly, Mrs. K. J. B. L. Wynne, Mrs. W'm Gilmer.

86[3] *Directresses.*—First ward: Mrs. John W. Taylor, Mrs. J. B. Miller. Second ward: Mrs. A. Street, Mrs. B. Walt. Third ward: Mrs. Charlie Jones, Mrs. J. C. Johnson. Fourth ward: Mrs. R. L. Kay. Mrs. F. M. Cash. Fifth ward: Mrs. N. S. Bruce, Mrs. A. H. Douglas, Sixth ward: Mrs. M. E. Houston, Mrs. E. P. Bunce. Seventh ward: Mrs. W. S. Vernon, Mrs. Jas. Flaherty, Mrs. Geo. Grant. Eighth ward: Mrs. H. T. Hulbert, Mrs. Jane Pitman. County: Mrs. Col. D. V. McLain

Mrs. C. J. Selden, Mrs. Capt. Wray, Mrs. S. P. Walker, Mrs. S. M. Gondel, Mrs. Marcus Wright, Mrs. Q. C. Atkinson, Miss Ada Hays, Mrs. A. O. Harris, Mrs. A. J. Donaldson, Mrs. Ben May, Mrs. Frank Ball.

Board of council.—E. H. Porter, J. D. Williams, N. S. Bruce, J. C. Johnson, C. J. Selden, R. D. Baugh, J. M. Crews, D. B. Molloy, A. Woodruff, Q. C. Atkinson, W. B. Greenlaw, M. C. Galloway.

Trustees for the property of the Home for the Homeless.—Dr. J. M. Keller, M. C. Galloway, B. Bayliss, Dr. A. P. Merrill, T. J. Finnie.

86⁴ *First annual report of the Home for the Homeless.*

The board of managers feel it their duty, in offering to the public this their first annual report, to give, in connection, a slight sketch of the rise and progress of the association of the Home for the Homeless.

Owing in a great measure to the untiring zeal and well-directed efforts of Mrs. H. T. Hulbert and others, a meeting of the ladies of Memphis and Shelby County was held at the residence of Mrs. W. B. Greenlaw, in April, 1860, organizing themselves into an association by electing Mrs. M. C. Galloway president, Mrs. B. Bayliss vice-president, Mrs. G. P. Foute treasurer, Miss Mary L. Bayliss recording secretary, Mrs. Annie Chambers Ketchum corresponding secretary. The constitution was adopted, and the organization afterwards called the association of the "Home for the Homeless."

Immediate efforts were made by the association to induce the county court to remove the county poor-house to Memphis, in order to unite the two into one, thereby giving the association the benefit of the county-poor fund. Failing in this, a petition was drawn up and presented to the city council, praying them to grant land near the city whereon to erect suitable buildings for a home.

86⁵ Through the kind efforts of Mayor Baugh and several of the aldermen, to whom we tender many thanks, the petition resulted in the purchase and donation of fifteen acres of land, with a building containing four rooms, with out-houses, situated four miles from the city, on the Memphis and Ohio Railroad.

The object of the association was three-fold, viz: a home of industry, an asylum for the infirm and aged, and a house of correction and reform for the erring; but owing to the want of adequate means to erect suitable buildings when the home was opened, they were obliged to limit themselves to the reception of only one class of persons, viz, destitute women and children, a class, who, before the opening of this institution, were thrown upon the community as common beggars. Being most of them widows and orphans, or, worse, the wives and children of drunken and worthless men, they had no alternative but to beg in the street or to become inmates of the county poor-house; but now a home is opened to them, where they are comfortably clothed and fed, and furnished the means of partly earning their own livelihood. The influence of such a system of benevolence on the character of the recipient is clearly shown in this institution to be far preferable to dispensing private charity to common beggars. The inmates feel a kind of independence that is unknown to the common beggar, for they give, by their labor, in part, for what they receive. No one need beg in the streets while there is room at the home to furnish them shelter, and opportunity offered for earning their own support.

In December, 1860, a board of managers was elected, twenty-four in number, composed of two ladies from each denomination of Christians in the city, two not connected with any church, and eight from the county. The duties of the board of managers will be found in the constitution and by-laws.

We, the board of managers, feel it becomes a pleasure, as well as a duty, to offer to the public a brief account of our work of faith
86[6] and labor of love during the past year. It may be truly called a work of faith and love, for amid the discouragements and disappointments we often meet with, our hands would droop and our energy be chilled did not love for the destitute mother and child, and faith in Him who hath said, "He that giveth to the poor lendeth to the Lord," animate us to renewed exertions. Relying upon His promises, and remembering His gracious declaration, "Inasmuch as ye have done it unto the least of these, ye have done it unto me," we have pressed forward in our laborious task, and thankfully report the satisfactory condition of the home at the present time.

Since the home was opened, December 8th, 1860, we have erected a building containing six rooms and a large dining-room, with a comfortable attic, containing two large rooms.

We have put under cultivation all the ground that can be used without injury to the place, and have raised all the vegetables used in the family, and the greater portion of the corn and fodder we have needed.

We have received seventy-nine inmates during the year—thirty-five women and forty-four children, five of whom were born in the institution. Of these a large number have been honorably discharged, and a few have been dismissed for insubordination. Of the number discharged some have found employment in the city, by which they could earn their own livelihood, whilst others have been sent to their friends at a distance. This constant change at the home has rendered it difficult to establish that system and order in the family arrangements that is necessary and desirable.

The women are occupied principally in washing, ironing, and sewing. They have every facility for washing, having a wash-room, ironing-room, and furnace-room, all in connection. They are prepared to wash and iron from eighty to one hundred dozen per week; and, by the quantity, can do it cheaper and better than it can be done in the city. We would respectfully solicit the patronage and influence of the public to this department, as we believe it the surest means for rendering the institution self-sustaining.

86[7] We have a sewing-machine, and are prepared to do any kind of machine-work, such as tucking, hemming, making shirt-bosoms, soldiers' clothes, etc.

Since the beginning of our national troubles the benevolent, as well as the patriotic spirit of the community has been so much absorbed in attentions to the sick and wounded soldiers, and in furnishing the necessary comforts for our brave men in camp and field, that we have refrained from putting forth our claims, until now stern necessity compels us to make appeals to the philanthropy and benevolence of the community. We know this is considered a very inauspicious time to make a demand on the public, but, at the same time, we know that many, perhaps the most of our merchants and business men, have profited rather than suffered by this crisis; and it being at present difficult to find a safe investment for their means, we would suggest the institution of the Home for the Homeless as a safe bank; for He who is the bestower of wealth hath said, "He that soweth bountifully shall also reap bountifully, and he that soweth sparingly shall also reap sparingly."

Neither the buildings nor grounds are sufficiently extensive to answer the purpose for which the institution was designed, and we desire to purchase additional grounds and to erect permanent buildings as soon as possible.

We feel that much good is being done, but it is limited compared to what it would be if we were able to carry out the original idea of the association.

At the beginning of the year we placed twenty-five hundred dollars in the city treasury as a reserve fund for building purposes, but from a failure in our donations, subscriptions, and memberships, we have been compelled to draw upon it until only about five hundred dollars remain.

To Mrs. Cooper, now Mrs. P. B. Glenn, we would tender many thanks for her generous donation of one thousand dollars.

It was our intention, when the home was opened, to employ a teacher for the instruction of the children, as the home is too far from
86⁸ the city for them to profit by the city schools, but our limited means would not justify it; but it is our intention, if possible, to employ one for the coming year. The children must be educated if we would do them good.

The health of the institution has been remarkably good for the number of persons admitted. There has been but two deaths, and, in addition, no case of serious illness, in a little over a year. One of these deaths was a woman who was past medical aid when sent to the home, and who died in a week from the time she was admitted.

This state of health we attribute in a great measure to the locality of the home, and to the kind medical care and attention of Drs. Gabbert, Hewett, McGinnis, and Taylor, to whom many thanks are due. We would also render thanks to the clergymen of our city who have held divine service at the home. We hope, for the coming year, to be able to make some arrangements by which divine worship can be held regularly every Sabbath. In acknowledging our many obligations we must not forget to render thanks to the editors of our city, who have done more than any others to further our cause. In conclusion of this history we would revert again to our limited means. Our receipts have diminished so much within the last six months that we have had great difficulty in meeting the needful expenses of the year; and, while we hope for a continuation of liberality on the part of those who have already responded so liberally to our appeals for aid, subscriptions and donations will be thankfully received by any of the officers, managers, or directresses of the institution.

86⁹ *Report of secretary of board of managers.*

Managers for month.	Date.	Provisions.	Provend'r.	Fur'r & farming implements.	Incid'l and clothi'g.	Salar'a.	Total.
Mrs. Porter & Greenlaw...	Dec. 15 to Jan. 15	$11 45	$5 10	$186 94	$24 04	$70 00	$297 53
" Flaherty & Edmonds.	Jan. 15 to Feb. 15	56 35	10 39	5 25	15 60	5 00	92 59
" Selden & Wray.....	Feb. 12 to Ma'ch 15	85 90	75	2 50	19 80	.....	108 95
" Stark & Means	Ma'ch 15 to Ap'l 15	55 87	11 70	20 75	29 65	70 05	188 02
" Vernon & Wray	April 15 to May 15	57 61	11 89	1 75	12 10	3 00	86 35
" Hulbert & Gonder ...	May 15 to June 15	68 59	7 24	1 50	8 93	10 00	96 26
Miss Frazier & ...	June 15 to July 15	51 87	2 80	1 45	17 71	38 00	101 83
Mrs. Keller & Manly.....	July 15 to Aug. 15	67 93	1 55	3 15	5 51	29 00	107 14
Mrs. Beaucamp & Wynne.	Aug. 15 to Sept. 16	62 85	2 00	1 25	20 20	30 00	116 30
" Galloway & Trigg ...	Sept. 15 to Oct. 15	27 20	.....	.....	24 95	.....	52 15
" N. S. Bruce	Oct. 15 to Dec. 1	60 28	.....	3 50	37 45	162 00	263 23
Secretary of the board....	Dec. 1 to January 1	58 57	.....	37 70	41 68	70 00	207 95
						2 cows.	55 00
Total	.....	664 47	53 49	265 74	312 62	432 05	1,783 30

L. F. JOHNSON, *Secretary.*

86[10] *Constitution of the association of the Home for the Homeless.*

We, the ladies of Memphis and Shelby County, in order to establish a home for the destitute, which shall also be a refuge for the infirm and aged, and a house of correction for the erring, do ordain this constitution for our guidance and control.

ARTICLE I. This organization shall be called the association of the "Home for the Homeless."

ART. II. This organization shall be composed of the ladies of Memphis and Shelby County. Each member shall pay an annual contribution of $3.00, or by paying $50.00 shall be a member for life.

ART. III. The officers of this association shall consist of a president and vice-president, a treasurer, a corresponding and recording secretary, three directors from each ward in the city, and twelve from the county. These officers shall be elected by the association at their annual meeting, on the first Monday in January.

ART. IV. This association shall meet regularly, the first Monday of each month, at 10 o'clock a. m.

86[11] ART. V. The president shall preside over all meetings of the association; she shall appoint all committees, and call special meetings, and if any vacancy occurs among the officers during the year, she shall appoint an incumbent to fill such vacancy. In all cases of balloting, where there is a tie, she shall give the casting vote. She shall sign all orders on the treasurer, except for current expenses of the home.

ART. VI. The vice-president shall preside over the meetings of the association in the absence of the president, and be vested with full power pro tem.

ART. VII. The corresponding secretary shall write all documents and letters required by the association, and reply to all communications received by the same.

ART. VIII. The recording secretary shall keep a record of the meetings of the association, and shall copy the same for publication whenever the association may require. She shall write all notices of regular and call meetings, and shall keep a register of the names of members in a book provided for the purpose, with an account of all monies paid by or due from them.

ART. IX. The treasurer shall receive all monies belonging to the association, and deposit the same in some safe bank in the city, or make any other safe investment the association may think proper. She shall disburse all monies used by the association, and keep her accounts in books which shall be subject at all times to inspection by the board of managers. She shall furnish a monthly abstract of her receipts and expenditures, and the balance remaining in her hands, and prepare a statement to be laid before the association at their annual meeting.

ART. X. The directors in each ward shall have no jurisdiction outside of their respective wards. It shall be their duty to solicit donations, yearly contributions, and membership in their wards. They shall bring to the treasurer on the first Monday of each month all monies collected, with a report of the same, to the association. They shall also constitute an investigating committee for the admission of inmates to the home.

86[12] The directors from the county shall solicit donations, yearly contributions, and memberships outside the city limits, and shall bring or send all monies collected during the month to the treasurer, on the first Monday in each month, with a report of the same to the

association. They shall also be members of the investigating committee.

ART. XI. The board of managers shall consist of twenty-four ladies; two from each denomination of Christians in the city and county, and two not connected with any denomination, whose duty shall be to purchase, or superintend the purchasing, of all articles for the use of the Home, and to direct and assist the matron in the management of it, and the grounds connected therewith. They shall make by-laws for their own government, and prepare and adopt rules and regulations for the Home. They shall present, at each annual meeting of the association, through their secretary, a report of their proceedings during the past year, and of the present condition of the Home.

ART. XII. There shall be elected, at each annual meeting of the association, twelve gentlemen to act as a board of counsel, whose duty it shall be to advise in all matters referred to them by the association, board of managers, or any of the committee.

ART. XIII. The board of managers, and the board of counsel, shall have power to fill all vacancies occurring in their own bodies.

86[13] *By-laws of the asssociation of the Home for the Homeless.*

First. This association shall be opened with reading a portion of Scripture, and prayer.

Second. Ten members shall constitute a quorum to do business.

Third. The president, vice-president, recording secretary, and treasurer shall be fined twenty-five cents for non-attendance at each meeting, unless in case of illness.

Fourth. The secretary, when compelled to be absent, shall send her books, with the minutes of the last meeting, to the president.

Fifth. Business shall commence precisely half an hour after the time appointed for meeting.

Sixth. The order of business shall be:

1. Reading the minutes of last meeting.
2. Paying monthly dues and receiving new members.
3. Hearing treasurer's report.
4. Hearing reports of committees.
5. Attending the unfinished business.

Seventh. Every motion, when made and seconded, shall be stated from the chair. The president shall then invite discussion upon the subject, after which the vote shall be taken, first in the affirma-
86[14] tive and then in the negative. No other business shall be taken up by the association, or discussed by any of the members, until that which has been laid before them be decided or postponed.

Eighth. When votes are called for, no person shall decline voting.

Ninth. At the request of any member of the association, the decision of a new question may be deferred to the meeting succeeding that at which the question was proposed.

Tenth. No former resolution shall be reconsidered, unless called for by one of the majority; and shall in all cases be deferred till the next meeting, either special or stated, for decision.

Eleventh. No person shall decline acting on a committee, unless another member, approved by the president, shall be willing to serve in her place.

Twelfth. The first member named on a committee shall preside over it; shall give notice of the place and time of meeting, and make a report of their proceedings.

Thirteenth. The secretary shall receive all monies paid in for memberships, pay over the same to the treasurer, taking her receipt therefor.

Fourteenth. The board of managers shall appoint two of their number to superintend the Home for each month, beginning with the first day of the month; and shall require a written report of the condition of the Home, and an exact account of all articles purchased and monies expended; said report to be presented at the monthly meeting of the association.

Fifteenth. The ladies having charge of the Home for the month shall be entitled to draw upon the treasurer for an amount not exceeding two hundred and fifty dollars for the current expenses of the month, and shall pay to the matron ten dollars for incidental expenses for the Home, requiring an exact account of the same to be rendered, which shall be embodied in the monthly report.

86[15] *Rules for the regulation of the board of managers.*

First. The managers shall meet on the Friday before the first Monday in each month, at 10 a. m., at such place as they may designate. And five members shall constitute a quorum for the transaction of all business.

Second. Each meeting shall be opened with reading a portion of Scripture and prayer.

Third. A fine of twenty-five cents shall be incurred for non-attendance at each meeting, unless excused by a vote of the board.

Fourth. No questions shall be decided at a special meeting, unless special notice of the meeting has been given.

Fifth. The business of each stated meeting shall commence with the secretary's reading the minutes of the last meeting, the report of the managers for the month, the matron's report, &c., which, if not presented, must be called for by the president. The managers for the ensuing month shall then be elected by the board and the orders on the treasurer voted.

Sixth. Every motion, when made and seconded, shall be stated by the chair. The president shall invite discussion upon the subject,
86[16] after which the vote shall be taken, first the affirmative and then the negative. No other business shall be taken up by the board or discussed by any of the members until that which has been laid before them has been decided or postponed.

Seventh. At the request of any member of the board the decision of the new question may be deferred to the meeting succeeding that at which the question was proposed.

Eighth. No former resolution shall be reconsidered unless called for by one of the majority, and shall in all cases be deferred till the next meeting, either special or stated, for decision.

Ninth. No person shall decline acting on a committee unless another member, approved by the president, shall be willing to serve in her place.

Tenth. The member first named on a committee shall preside over it, give notice of the place and time of meeting, and make a report of their proceedings before the board.

DUTIES OF THE OFFICERS AND MONTHLY COMMITTEES.

The president shall preside at the meeting of the board of managers, preserve order, appoint all committees, unless otherwise directed, cal-

extra meetings as often as she may think proper, but she shall not be obliged to call them, contrary to her own judgement, unless five members of the board concur in requesting it. She shall have a vote as manager, and shall give a casting vote when the board is a tie.

The secretary shall summon the meeting of the managers, keep a fair and correct record of their proceedings, a register of the inmates of the Home, sign all drafts on the treasurer of the association for the current expenses of the Home, payable to the order of the ladies composing the committee for the month. She shall enter in her books the amount of all drafts, and receive from the committee and matron an explicit account of all the items of their expenditures, for the current expense of the Home, and enter the same in her books, and report the same at each monthly meeting of the board of managers and of the association.

86[17] The monthly committees shall be governed by the following rules:

They shall visit the home not less than once a week during their month; shall endeavor to be present once at each meal; and, if possible, during one morning and one afternoon school hour.

They shall act according to their own judgement in all cases requiring immediate attention, but any permanent *attention* in the rules of the family must be by a vote of the board.

They shall make, by themselves or through the matron, all necessary purchases for the family.

They shall not keep an open account with any house, but shall pay cash for all their purchases.

They shall present to the board of managers at their monthly meetings, a report of all their proceedings, and shall give, through the secretary of the board, an account of all the articles purchased, with every item properly designated, during their month, returning what money shall remain in their hands unexpended, taking the receipt of the secretary therefor.

No one shall be admitted to the Home without having been examined by one of the regular physicians of the institution, whose duty it shall be to vaccinate, if it has not been done, and state if they are free from contageous or chronic disease.

They shall attend particularly to the business interest of the school; shall examine monthly into the progress of the children, and reward those that are deserving, and report monthly to the board.

They shall procure a clergyman to preach at the Home whenever possible; shall make every preparation necessary for the worship being properly conducted; shall endeavor to attend divine worship at the home one Sabbath in their month, and shall generally direct the proper mode of giving the children religious instruction.

The board of managers shall appoint annually six physicians to act as consulting physicians.

86[18] *Rules for the regulation of the house.*

First. The inmates shall rise at five o'clock in summer, and six in winter.

Second. As soon as they are dressed, their hands and faces washed, their hair combed, and their rooms in order, they shall be assembled, either in the eating-room or school-room, as may be most convenient, when the matron shall read clearly and distinctly a chapter in the Bible, and a family prayer, after a form to be given by the managers, or an impromptu prayer, as the matron or managers think best.

Third. They shall breakfast at eight in the winter, and seven in the summer; which shall consist, for the children, of cold milk and bread, or bread and molasses in summer; in winter, bread cut up and boiling milk poured over it, or rice and milk, or mush and milk.

Fourth. The women shall occupy their time at such employment as they are best capacitated for, either in the work-room or kitchen, avoiding all gossip or idly congregating themselves together on the porches, or in the yard adjoining either of the buildings. After breakfast, they shall assemble at their respective occupations, and during business hours shall adhere strictly to their several duties, submitting *explicitly* to the directions of the matron and the rules and regulations of the Home.

86[19] Fifth. There shall positively be no talking or lights in the different sleeping apartments after ten o'clock.

Sixth. There shall be a nursery for the use of children under four years of age, and a nurse or nurses to take charge of them. Those that are capable of learning their alphabet shall be sent into the school-room once in the morning and twice in the afternoon, for not more than a half hour each time.

Seventh. There shall be a school-room fitted up for the use of the larger boys and girls, where they shall be taught from two to three hours in the morning, and not longer than one or one and a half hours in the afternoon.

Eighth. They shall dine at twelve o'clock. The dinner shall consist of beef, mutton, pork, or salt or smoked meat, as best adapted to the season and easiest procured, with two kinds of vegetables, when they can be had, and corn-bread or wheat-bread; on Sundays they shall have cold meat, bread and butter or cheese, with fruit, preserves, or puddings. Their supper shall be cold meat and bread, milk, tea or coffee, as the managers think proper.

Ninth. As soon as supper is over, the inmates shall kneel or stand in their places while the matron shall read aloud an evening prayer, after a form to be furnished by the managers, or extempore, as they think best. After which the matron shall collect around her such of the inmates or children as have been guilty of improper conduct through the day, and shall, in a serious and affectionate manner, converse with them on their faults.

Tenth. The matron shall say grace before every meal in an audible and distinct voice, so as to be heard by the children, impromtu, or after a form to be provided by the managers.

Eleventh. No person employed in the family shall inflict punishment on the children except the matron, teacher, or parent.

Twelfth. Theft, lying, quarreling, wilful mischief, idleness, disobedience, or impertinence to the teacher or matron must never be suffered to go unpunished.

86[20] Thirteenth. The parents shall be required to bathe the children at least once a week, and change their under-clothing and dresses once and their aprons twice a week.

Fourteenth. The boys shall give any assistance in the family between school hours, suitable to their age and strength, but shall not be kept out of school for that purpose.

Fifteenth. No spirituous liquors shall, under any pretence whatever, be introduced into any part of the premises, except by order of the physician.

Sixteenth. The use of profane language is positively prohibited in the Home.

Seventeenth. No one can leave the premises without permission from the matron, or one of the managers for the month.

Eighteenth. No one can be discharged from the Home without a written permit from the president of the board and one of the managers for the month.

Nineteenth. The house and family washing shall be done on Friday, and the ironing on Saturday.

86[21] *Duties of the matron.*

It shall be the duty of the matron to keep a register of the name and age of every inmate placed under her care, when received, when and under what circumstances discharged, and any other remarks that may be useful.

She shall keep a record of events worthy of note; the number of inmates in the home; how employed; the number discharged, and under what circumstances, and submit the same to the board of managers each month.

She shall be careful to keep an account of the furniture, kitchen, and farming utensils bought each month; also a strict account of all monies expended by her for the use of the Home, which shall be embodied in the report of the manager for the month.

She shall keep an account of all work done in the home for which money is to be received, with all the items specified, and shall hand it to the secretary of the board of managers for collection.

She shall endeavor to unfold to those under her charge the advantages of a moral and religious life, and impress upon them a conviction of the evils and miseries that attend the wicked and profligate.

She shall be authorized to punish them for misconduct by such methods as the board of managers shall approve.

86[22] *Treasurer's report for* 1861.

Dr.	
Proceeds of fair	$581 45
Donation from Mrs. Gen. P. B. Glenn	1,000 00
Received from concerts, etc.	150 35
" " donations and membership	2,271 93
Total	4,003 73

Cr.	
Current expenses of home, as per report of secretary of board of managers	$1,783 30
Waggon	125 00
Buildings	1,026 00
Printing address	35 00
Poor families and incidentals	170 99
In city treasury	651 19
In bank	130 00
Balance on hand	82 25
Total	4,003 73

86[23] *List of members of the association of the Home for the Homeless.*

Mrs. Jack Armstrong, Mrs. —— Anderson, Mrs. P. Adams, Mrs. Q. C. Atkinson, Mrs. W. T. Avery, Mrs. E. M. Avery, Mrs. A. H. Avery, Hon. W. T. Avery, Mrs. Minnie Burr, Mrs. Emily F. Ball, Mrs. Sarah A. Brown, Miss Mary Bayless, Mrs. N. S. Bruce, Mrs. E. P. Bunce, Mrs. Dr. Battan, Mrs. W. P. Bowles, Mrs. R. Brewster, Mrs. M. Baxter, Mrs. J. F. Bowen, Mrs. J. Boyd, Mrs. B. Bayless, Mrs. R. C. Brinkley, Mrs. Joe. Bruce, Mrs. C. Boyd, Mrs. Richard Brown, Mrs. W. T Beauchamp, Miss Lula Baugh, Mrs. W. T. Brown, Mrs. B. Brown, Mrs. E. C. Beaman, Mrs. Mary Bosley, Mrs. Elizabeth Copeland, Mrs. Edward Clark, Mrs. James Cook, Mrs. —— Clayton, Mrs. S. B. Cherry,

Mrs. —— Connell, Mrs. D. R. Cook, Mrs. Gus. Chamagne, Mrs. R. H. M. Cockrell, Mrs. H. Craft, Mrs. F. M. Cash, Mrs. C. B. Church, Mrs. W. W. Coleman, Mrs. William Connell, Mrs. W. B. Donoho, Mrs.
86[24] A. H. Douglas, Mrs. A. J. Donaldson, Mrs. L. V. Dixon, Mrs. —— Dorsey, Mrs. —— David, Mrs. Judge Dawson, Mrs. —— Deberry, Mrs. C. Daltons, Mrs. H. Door, Mrs. John Dennie, Mrs. E. C. Davie, Mrs. M. Douglas, Mrs. —— Dennie, Mrs. R. F. Dunn, Mrs. Henry Dollis, Mr. D. Denegre, Miss M. Douglas, Mrs. Dr. Edmonds, Mrs. G. P. Foute, Mrs. G. Falls, Mr. Appless Ford, Miss Phœbe Fraser, Miss Kate Foster, Mrs. W. D. Ferguson, Mrs. Dr. Fraser, Mrs. J. G. Flournoy, Mrs. Capt. Freleigh, Mrs. W. Ford, Mrs. James Flaherty, Mrs. J. W. Fowler, Mrs. J. P. Farrelly, Mrs. T. R. Farnsworth, Mrs. M. C. Galloway, Mrs. M. H. Gonder, Miss Martha Green, Mrs. Oliver Greenlaw, Mrs. W. B. Greenlaw, Mrs. Dr. Green, Mrs. James Grant, Mrs. J. C. Griffin, Mrs. —— Grigfin, Mrs. Dr. Geo. Grant, Mrs. W'm Gilmer, Mrs. H. L. Guion, Mrs. J. R. Garrison, Mrs. M. E. Houston, Mrs. H. T. Hulbert, Miss Adda Hays, Mrs. W. H. Hunt, Mrs. F. W. Hunt, Mrs. L. W. Hays, Mrs. —— Hoffman, Mrs. C. L. Hults, Mrs. J. P. Hunt, Mrs. Geo. L. Holmes, j'r, Mrs. Tho's Howard, Miss —— Hutchison, Master Pat. Hulbert, Miss Vallie Dill Hulbert, Mrs. C. M. Horton, Mrs. —— Hutchison, Mrs. W. D. Hays, Mrs. B. Howcott, Mrs. T. Harris, Mrs. Dr. Irwin, Miss Harriet Irwin, Mrs. Cha's Jones, Mrs. J. C. Johnson, Mrs. John James, Mrs. Tho's James, Mrs. J. C. Jones, Miss Gov. J. C. Jones, Miss Cyrus Johnson, Miss G. D. Johnson, Miss H. B. Joynes, Miss John Johnson, Mrs. Ja's M. Keller, Mrs. A. C. Ketchum, Mrs. J. B. Kirtland, Mrs. Cha's Kortrecht, Miss E. W. M. King, Miss R. L. Kay, Miss —— Kimball, Mrs. S. C. Law, Mrs. Adda B. Lloyd, Mrs. Geo. W. Lincoln, Mrs. —— Lance, Mrs. J. G. Lonsdale, Mrs. —— Lynch, Mrs. Bob't Looney,
86[25] Mrs. F. S. Latham, Mrs. F. Lane, Mrs. L. A. Merriweather, Mrs. J. W. McClure, Mrs. J. Martin, Mrs. J. B. Miller, Mrs. J. F Mills, Mrs. C. D. Malone, Mrs. J. C. Mount, Mrs. Dr. Millington, Mrs. B. A. Massey, Mrs. Col. McLean, Miss Mollie McGiveney, Mrs. W. B. Miller, Mrs. Col. McMahon, Miss Kate Martin, Mrs. James McManus, Mrs. Jno. F. McKenney, Mrs. Sarah A. Means, Mrs. Tho's Manley, Mrs. J. G. Murphy, Mrs. —— McClure, Mrs. —— Newman, Mrs. W'm Orgill, Mrs. H. H. Potter, Mrs. Jane Pitman, Mrs. W'm Park, Mrs. E. H. Porter, Mrs. Mary Pierson, Miss H. Pattello, Miss Anna Randolph, Miss H. Rodgers, Mrs. S. Reed, Mrs. Eli Raynor, Mrs. C. Richardson, Mrs. Mollie Rose, Mrs. —— Richardson, Mrs. F. G. Robinson, Mrs. J. B. Starke, Mrs. Mary J. Small, Mrs. Anthony Street, Mrs. Letitia Sullivan, Mrs. J. H. Speed, Mrs. Dr. Shanks, Mrs. C. J. Selden, Mrs. M. M. Seay, Mrs. —— Stephenson, Mrs. Fred. W. Smith, Mrs. J. L. Saffarrans, Mrs. B. J. Semmes, Mrs. —— Shields, Mrs. J. B. Sharpe, Mrs. S. H. Shock, Mrs. Frank W. Smith, Mrs. J. M. Tate, Mrs. Tom Tinley, Mrs. J. Toof, Mrs. A. H. Thomas, Mrs. —— Thomas, Mrs. A. K. Taylor, Mrs. D. H. Townsend, Mrs. D. C. Trader, Mrs. Jno. Trigg, Mrs. Tho's Trout, Mrs. Amelia Thompson, Mrs. R. F. Torian, Mrs. W. V. Taylor, Mrs. Jno. W. Taylor, Mrs. Louisa A. Vernon, Mrs. Vallentine Werner, Mrs. Geo. Winchester, Mrs. Sam'l Wilson, Mrs. A. D. Witherspoon, Mrs. —— Weiller, Mrs. Capt. Wray, Mrs. R. P. Walt, Mrs. F. M. White, Mrs. B. B. Waddell, Mrs. Macus J. Wright, Mrs. Dr. Wright, Mrs. J. D. Williams, Mrs. Sam'l Woodson, Mrs. K. J. B. L. Winn, Mrs. S. P. Walker, Mrs. —— Young, Mrs. Ed. Yerger, Mrs. Jno. York.

86[26] *Life-members.*—Mrs. Gen'l P. B. Glenn, Mrs. H. T. Hulbert, Mrs. Amos Woodruff, Mrs. A. J. White, Mrs. J. C. Johnson, Mrs. —— Thompson, Mrs. Geo. Dixon, Mrs. Henry Craft, Mrs. J. M. Gonder, Mrs. —— Dawson.

86[27] *Annual subscribers.*

SECOND WARD.—R. P Walt, $25.00; E. H. Porter, 25.00; J. A. & T. W. Boyd, 10.00; H. Mette, 10.00; S. W. Jefferson, 10.00; S. C. Churchhill, 5.00; Nathan Hulbert, 5.00; Jas. Sharkie, 5.00; F. J. Atwood, 5.00; Maddox & Graves, 5.00; M. A. Kirkley, 5.00; W'm T. Ashby, 5.00; W. A. McCleq, 3.00; V. Barbaro, 2.50.

THIRD WARD.—A. Woodruff, $50.00; A. J. White, 50.00; J. C. Johnson, 50.00; W. B. Miller, 25.00; McKinney & Co., 25.00; Jack & Shanks, 25.00; E. T. Keel, 25.00; F. Titus, 25.00; W. R. Chandler, 25.00; G. W. Jones, 25.00; Sprowle & McGown, 25.00; J. S. Drake & Co., 25.00; Williams, Ross & Co., 25.00; J. W. Paige, 10.00; Cyrus Johnson, 10.00; Andrews & Glisson, 10.00; B. Bingham, 10.00; Ward & McClelland, 10.00; Jno. M. Young, 5.00; W'm Silverburg, 5.00; J. Rocco, $5.00; C. Mendel, 5.00; Jno. A. Lea, 5.00; G. B. Millington, 5.00, M. Simon & Co., 5.00; Sol. B. Hendrix, 5.00; J. H. Lehman, 3.00; B. F. Haller. 3.00; W. S. Eastman, 1.00; R. L. Jones, 1.00; J. W. Grandy, 1.00; G. A. DeBow, 1.00; D. B. Kline, 1.00; N. W. Overhalser, 1.00; Sidney Jones, 1.00; D. B. Bradford, 1.00; J. W. Falls, 1.00; J. L. Harrison, 2.00; E. W. Newman & Co., 1.00; Vendig & Bro., .50.

86[28] SEVENTH WARD AND OTHERS.—Mrs. J. Flaharty, $3.00; S. W. Vernon, 3.00; W. W. Coleman, 3.00; M. A. Dunn, 3.00; Pike Bowles, 3.00; H. Patillo, $3.00; R. T. Torian, 3.00; J. J. Murphy, 3.00; H. R. Hobson, 3.00; T. J. Turly, 3.00; T. R. Farnsworth, 3.00; H. F. Farnsworth, 3.00; Jno. Dennie, 3.00; Miss Corilla Patrick, 3.00; Miss C. M. Horton, 3.00; Mrs. J. B. Sharpe, 3.00; Mrs. Jno. Yorke, 3.00; Mrs. Jas. Bruce, 4.00; Mrs. F. M. White, 4.00; Mrs. I. B. Kirtland, 5.00; Mrs. T. W. Avery, 5.00; Mrs. A. H. Douglas, 5.00; Mrs. M. Douglas, 4.00; Mrs. Amelia Thompson, 5.00; Mrs. R. C. Brinkley, 5.00; Mrs. Frank Ball, 10.00; Mrs. A. Y. Orne, 2.00; Mrs. H. Craft, per month, 5.00; J. Adams, 5.00; Jas. Trabue, 5.00; D. M. Currin, 5.00.

86[29] *Donations.*

St. Agnes, $50.00; Catholic Church, 59.20; Mrs. Col. Manley, 13.00; Baptist Church, 29.00; Grace Church, 21.00; Geo. Dixon, 50.00; C. W. Cherry, 25.00; D. B. Malloy, 10.00; Gayoso Sav. Inst, 20.00; Mrs.—— Stockly, 10.00; Mrs. A. M. Foute, 10.00; Miss A. Young, 2.50; Mrs. ——— Meacham, 10.50; Bishop Otey, 5.00; D. Denegre, 3.00; Orgill & Bros., 10.00; S. M. Gonder, 50.00; Mrs. Judge Dawson, 50.00; Mrs. ——— Gardner, 20.00; Mrs. J. M. Gonder, 5.00; Friend, 60.00; C. & W. McLaine, 5.00; J. & C. Levy, 1.00; Moses Levy, 1.00; 1.00; Jas. Graham, 1.00; Mrs. ——— Lagorio, .50; Capt. ——— Timmes, 1.00; Tho's McKeon, .25; Jacob Labe, .25; Mrs. Fegar, 1.00; Mrs. Goggin, .50; Mrs. ——— Thompson, 50.00; Anonymous, 5.00; Mrs. W. E. Epps, 1.00; Miss ——— McIntosh, 2.00; Mrs. Tho's Allen, 20.00; Mrs. Frank White, 10.00; Mrs. D. Dunn, 10.00; R. C. Brinkley, 2.00; W'm Hulbert, 5.00; Capt. W. Armstrong, 4.00; Mrs. W. Galloway, 4.00; J. G. Lonsdale, 10.00; R. S. Ray, 10.00; ——— Sheperd, of S. & Moore, 10.00; ——— Saunders, 5.00; Mrs. Hennetta Smith, 5.00; Mrs. Maria Rowley, 5.00; Mrs. R. Bulkley, 5.00; Mrs. —— Sample, (Chelsea,) 5.00; J. L. Saffarrans, 5.00; —— McCrea, 2.50; —— McCay, 1.00; Sam. Lapsly, 1.00; Edw' Ward, 1.00; —— Copperthwaite, 1.00; Mrs. ——— Begbie,

86[30] 1.50; Jones, Brown & Co., .50; John Todd, 15.00; by Mrs. J. M. McCombs, 3.15; Mrs. R. Tapp, 5.00; Mrs. H. Wade, 4.00; Mrs. C. Jewell, 2.50; Mrs. —— Cogswell, 2.50; Mrs. N. B. Holt, 1.00; Baxter &

Co., (lumber,) 50.00; Griffing, & Co., (lumber,) 50.00; Wynne & Co., (lumber,) 50.00; Street & Hungerford, (lumber,) 30.00; H. D. Connell & Co., (lumber,) 40.00; Moore & Halstead, (lumber) 30.00; Jas. M. Connell (lumber,) 50.00.

86[31] *Donations.*

One bedstead, Camp & Co.; six chairs, Hunnewell & Co.; two tubs, two buckets, two brooms, two brushes, one wash-board, one basket, one sieve, Ingraham & Lees; two wash-boards, Titus & Co.; one walnut safe, McKinney & Co.; one barrel flour and sack potatoes, Walt & Johnson; one barrel flour, Burdett & Choate; two pieces of bacon, DeLoach; twenty dollars towards a stove, A. J. White; box crackers and two cans mustard, Rocco; quarter barrel of sugar and one bag salt, Dunscomb; one box cheese and sack potatoes, H. Dow & Co.; sugar, jar lard, and small sack coffee, Hernando Street; barrel molasses, Tho's Trout; bottle oil, two dozen cups and saucers, two dozen plates and tumblers, Erich & Co.; two dozen plates, two dozen cups and saucers, six dishes, two pitchers, one wash-bowl and pitcher, one dozen tablespoons, and two dozen teaspoons, Jack & Shanks; one dish-pan, two tin dippers, two wash-pans, Saffarrans & Co.; one wash-pan, Graham & Co.; one dozen tumblers, two large dishes, six common bowls, two large tubs, one large waiter, two small waiters, one dozen knifes and forks, one dozen teaspoons, two flat-irons, six tin candle-sticks, one shovel, two salt-cellars, one dust-pan, one molasses-cup, one scrub-brush, one pepper-box, one match-box, two pitchers, two chambers, and one lot damaged ware, Hunt & Lloyd; one castor, one dozen knives and forks, Merriman & Co.; one clock, F. H. Clark; one box starch, Talbot & Dancey; one box candles, Hendrix & Co.;
86[32] twelve yards domestic, J. D. Williams & Co.; thirty-six yards carpet, and thirty-seven dollars towards a sewing-machine, Lehman & Co.; one dozen towels, two table-cloths, and one piece domestic, A. B. Coffee & Co.; one piece crash, Hoffman; four and a half yards linsey, and fourteen yards woolen goods, Walker & Bro.; twenty-one yards calico, and five spools and needles, Seessel; seventeen yards calico, Mrs. Sontag; one piece calico, Southworth & Nance; six pairs blankets, Cossitt & Hill; one bundle second-hand clothes, Mrs. Goldberg; three pairs blankets, and one piece oil-cloth, Lindsday & Shelton; one sack of cotton, Mrs. Starke; two bedsteads and two coffins, J. & M. Flaherty; one wash-machine, H. M. Grosvenor; one comfort, two dish-pans, ten pounds soap, one broom, and four buckets, Levy & Co.; two smoothing-irons, one broom, pepper, spice, soap, cinnamon, cream tartar, etc., Orne & Co.; one sack potatoes, and one shoulder bacon, Andrews & Glisson; groceries—three dollars, Geo. Griffin; three blank-books, one doz. pass-books, handsome Bible, Cleaves & Vaden; indigo and starch, Chandler; garden-seed, R. G. Craig, six wash-pans, two ladles, two coffee-pots, Mills & Co.; cash, for furnishing house, C. Seal; one wheelbarrow, one shovel, one axe, one calf, Mrs. W. B. Greenlaw; box shoes, B. Dumaine; box pepper, indigo, soda, etc., Dearing & Weatherell; box of sundries, G. W. Jones & Co.; fifty cents to furnish home, Jones, Brown & Co.; ten dollars to furnish home, Simon & Co.; shovels, tongs and poker, yellow soup-bowls, one dozen spools cotton, six papers needles, three brooms, six scrub-brushes, two sewers, and one bag sugar, one axe, one hatchet, one saw, two dozen tin cups, McCombs & Co.; cart and harness, and use of mule, one keg lard, J. D. Armour; one cow, one pair chickens, Mrs. W. S. Ball; two ducks, Mrs.

Dr. Edmonds; two barrels potatoes, Mrs. Hawks; one dozen brooms, J. H. King; one barrel potatoes, Mrs. Hickman; two pigs and one lot trees, Mrs. Vernon; one pair chickens, sixty pounds flour, one basket, one churn, and four dollars and thirty cents for railroad fares,
86[33] Mrs. Ja's Flaherty; two ducks and two cotton cards, Mrs. Bunce; one cow, flour, sack meal, twenty pounds sugar, etc., Mrs. John Trigg; one box candles, Mrs. John Spicer; one lot sugar, coffee, and tea, Mrs. Edmonson; one prayer book, Mrs. H. T. Hulbert; one goat, Master Howard Edwards; five hundred feet lattice-work, Reed & Montgomery; one pair chickens, Mr. Bryant; ten yards ticking, Mrs. John W. Hopkins; one lot bulbous roots, Mrs. Hawthorn; one lot trees, Mrs. Frank Ball; one pair trace-chains, one pair hames, one collar, one hoe, one swingle-tree, Hawks & Smith; one bedstead and mattrass, Mrs. A. T. Orne; five barrels potatoes, Smith & McLain; two barrels soft soap, Prescott & Co.; three hundred cabbage-plants, Mr. Cooper, sen'r; one day's plowing, Mrs. S. T. Wynne; one day's plowing, cotton-seed for cows, Col. Jno. Pope; one piece domestic, Ed. Spotswood; one piece domestic, Tho's Robbins; one piece domestic, Seesel & Co.; twenty yards domestic, Mr. Austin; three pair shoes, Wynne & Park; three pair shoes, Wallace & Van Pelt; four pair shoes, Snowden & Terry; castor-oil, salt, & camphor, Weatherell; remnants calico, Speed, Donoho & Strange; one piece red flannel, Shepard & Moore; one side meat, Mr. Vaccaro; one barrel flour, Mrs. Capt. Wormley; one barrel flour, Mrs. Flournoy; box tea, Meacham & Galbreath.

FOR THE RECEPTION ROOM.—One sofa, Mrs. J. Ford; one rocking-chair & sett chairs, Mrs. Gallaway, Flaherty & others; four window-shades, Mrs. J. C. Johnson, matting, &c., by other members of the board; one lot boys' clothing, Mrs. M. E. Houston; one piece plaid linsey, Lehman & Co.; ten dollars, for donation party; three dollars for children, D. Denegre; one piece damask, Mrs. N. S. Bruce; one lot children's clothing, Mrs. Edmonds.

86[34] FOR CHRISTMAS DINNER.—Two turkies, two geese, lot beef, Mrs. Vernon; two cakes, Mrs. Dr. Keller; once cake, Rocco; one ornamented cake, Specht; two dollars, Mrs. C. Jones; one dollar, Mrs. Mix; one dollar, Mrs. Dana; fifty cents, Mrs. Rawlings; one dollar, Mrs. N. S. Bruce; Mrs. C. Johnson; one turkey, Mrs. J. C. Johnson; cakes, meats, &c., Mrs. James Flaherty; sage, pepper, &c., Southern mothers; nics-nacs, Mrs. M. C. Gallaway; barrel molasses, C. J. Selden.

ARTICLES GIVEN BY SUNDRY INDIVIDUALS, UNKNOWN.—One hundred and fifty-eight yards domestic and sheeting, three parlor mats, two comforts, one grey blanket, fifty-one yards bed-ticking, one piece of bed-ticking, two flat-irons, four yellow bowls, sett candlesticks, one basket, two stoves.

A large number of articles were given by sundry individuals for the fair held at Odd-Fellows' Hall, of which no list was kept.

Other articles have been given by different persons, at different times, of which we have no record.

87 "EXHIBIT O."

CITY HALL,
Memphis, Sept. 6, 1859.

At a regular meeting of the board of mayor and aldermen, held on Tuesday evening at 3 o'clock, the report of the committee on the following resolution was, that the ground be declared a public promenade;

that an appropriation be made for grading, the report being approved by the board:

Resolved by the board of mayor & aldermen, That the strip of land lying between the Pigeon-Roost road and the old La Grange railroad belonging to the city be, and the same is hereby, declared a public promenade for the use and benefit of the city; and the street commissioners be ordered to grade the same so as to make it a public street from the junction of the Pigeon-Roost road and Adams streets to the railroad property.

This is to certify that the above and foregoing is a true and perfect extract copied from the minutes of the proceedings of the board of mayor and aldermen of the city of Memphis.

In testimony whereof I, Lewis R. Richards, city register, and keeper of the records and corporate seal have hereunto set my hand and attached the city seal this 15th June, 1872.

[L. S. OF CITY.] L. R. RICHARDS,
City Register.

88 *Answer to amended bill. Filed July* 8, 1872.

THE CITY OF MEMPHIS }
vs. }
T. E. BROWN. }

The defendant, for answer to the amendment of the plaintiff to its bill made *made* and filed June 17th, 1872, says he denies that the property in Garrett's subdivision was conveyed to the city, pl'ff, as trustee, for the purpose alleged, and avers that the city, pl'ff, bought and paid a full money consideration for said land, and took a deed absolute in fee-simple title thereto. Def't admits the pl'ff was induced to make such purchase by the considerations express in Exhibit M to pl'ff's amended bill. Def't is advised and believes, and so charges, that said association whose report is referred to as Exhibit N to said amended bill, have not used or occupied said land since 1862, and that from early in the year 1862 till 1865, said premises were not occupied by pl'ff nor said association, nor any one under them or either of them, for any charitable purpose whatever; and that for about five years past said association or corporation of the Home for the Homeless have assumed to rent said premises to another association organized for another and wholly
89 different charity, viz, for the care of crippled confederate soldiers.

And so def't says said premises have not for ten years past been used or occupied as a "Home for destitute, poor, and outcast of the city" by the said association, to whom its use was given in 1860; and whatever right such association ever did acquire under the action of the city, plaintiff, long since expired, and by the terms of the donation of its use as shown by said Exhibit M, reverted to the city; that since said association became incorporated by act of the legislature, the city has made no gift of said land, or any interest therein, to such corporation, and prior thereto such association was wholly incapable of taking or holding property, and had no corporate existence.

And, as to the parcel of land near Charleston avenue, def't denies the said city holds the same for a public square or park, and avers the same is a parcel of a large tract bought by said city, a part of which is dedicated to use as a street, but the parcel levied on by def't never was dedicated or used as a street, but the line of the street all around it is marked by curb-stones set by said city, and said parcel is an open barren

90 strip of land, wholly inadequate and useless, both for location and size, for a park or promenade, and has never been improved or used as such, and though at one time trees may have been planted on it, and a partial fence around it, yet def't charges no trees were planted that grew, and no fence made that protected it, and the tract has been an open common for a number of years past.

Whereupon defendant prays to be dismissed with his costs.

S. SIBLEY,
Sol'r for Defendant.

The affidavit of the def't to the foregoing answer hereby waived.

W'M M. RANDOLPH,
City Attorney.

Replication to answers of def't.—Filed Sept. 2, 1872.

THE CITY OF MEMPHIS
vs.
TALLMADGE E. BROWN. } Bill & cross-bill.

The replication of the city of Memphis to the answers of the defendant T. E. Brown to the bill and amended bill in this cause, says:

That it will aver, maintain, and prove its said bills of complaint
91 to be true, certain, and sufficient in law to be answered unto, and that the said answers of the said defendant are uncertain, untrue, and insufficient to be replied to by this repliant, without this that any other matter or thing whatsoever in the said answers contained, material or effectual in the law to be replied to, and not herein hereby well and sufficiently replied to, confessed or avoided, traversed or denied, is true. All of which matters and things the repliant is, and will be ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays as in its bill and amended it has already prayed.

W'M M. RANDOLPH,
City Attorney.

Motion to dissolve injunction.

CITY OF MEMPHIS
vs.
T. E. BROWN.

Comes now defendant, by sol'rs, and moves the court to modify the injunction herein so as to wholly dissolve the same concerning the following matter, viz:

1. In so far as the same prohibits the issue and service of alias
92 or other fieri facias writ for the enforcement of the decree of this court, and recovery thereby of this defendant's debt, because such restraint is contrary to the law of the case, and the practice of this court and the decree in this case.

2. In so far as said injunction restrains the sale of the following property duly levied upon, viz, the one thousand shares of the capital stock of the Memphis Water Company; also that parcel of land mentioned as the "North Market," lying between Poplar and Washington streets, and east of and adjoining the bayou Gayoso; also that parcel of land mentioned as the "South Market," lying on the north side of Beal street and west side of Hernando street; also that parcel of land adjoining Charles-

ton avenue on the east and extending from Court street to Adams street; also that parcel of land described as 15 acres, a part of lot 22 of Garrett's subdivision; the above-named four parcels of land being the four last-described tracts in the advertisement of sale by the marshal, to which reference is made for more particular description, for the continuance of such injunction is against the proof and the law of the case, in so far as said injunction in anywise affects the garnishee process
93 herein, or restrains proceedings against such garnishees as against the law in the proof shown the court.

S. SIBLEY,
Sol'r for Brown.
With HUMES & POSTON.

Order entered.—June 1, 1872.

This day come The City of Memphis, by W'm M. Randolph, esq., her attorney, and moves the court to continue the injunction herein; which motion, together with the motion to dissolve the injunction, are set for hearing on Monday, the 10th day of June instant.

Order entered.—June 27, 1872.

The motion of complainant to continue the injunction is granted, and the injunction is continued till the further order of the court; and the motion of the defendant to dissolve such injunction is overruled, to the end that the questions involved may be adjudicated on a hearing wherefrom an appeal will lie.

Order entered.—Nov. 7, 1872.

On motion, and for sufficient cause shown, it is ordered that the plaintiff have leave to file a replication to the answers of the defendant to the bill and amended bill nunc pro tunc as of the first
94 Monday of September, 1872; but the same shall not operate to delay the hearing of the cause, and the said replication is now accordingly filed.

Motion to dismiss bill.—Filed Oct. 15, 1872.

CITY OF MEMPHIS
vs.
T. E. BROWN.

Comes the defendant and moves the court to dismiss the bill of complaint in this case, for that the same shows no cause for the issuance or continuance of the injunction.

2nd. For that the remedy of complainant for the alleged grievances is not by injunction, but, if at all, for application to stay proceedings.

3d. For that the bill seeks an injunction against the process of this court issued in an equity suit to enforce a decree of this court, and, as such remedy, is allowable.

S. SIBLEY,
Solicitor for Def't.

95 *Notice to take depositions.*

In the United States circuit court for the dist. of West Tenn.

THE CITY OF MEMPHIS
vs.
T. E. BROWN. } Bill.

&

T. E. BROWN
vs.
THE CITY OF MEMPHIS. } Cross-bill.

To said City of Memphis:

You will please take notice that said T. E. Brown will take the testimony of Hon. John Johnson, J. J. Sears, H. Seessel, A. J. Kellar, John Donnovan, W'm M. Farrington, and other persons, before H. E. Andrews, esq., clerk of the said court, and one of the commissioners thereof, at the office of the clerk of said court, at No. 450 Main street, in the city of Memphis, in said district, commencing at ten o'clock in the forenoon of the 13th day of June, A. D. 1872, and continuing from day to day until concluded. Said testimony to be used in the trial of the above causes on the part of said Brown.

S. SIBLEY,
Sol'r for T. E. Brown.

96 (Endorsed as follows:)

UNITED STATES OF AMERICA,
Dist. of West Tennessee, ss:

I, S. Sibley, do on oath state I served the within notice on the The City of Memphis on the 8th day of June, 1872, by acquainting the mayor of said city, Hon. John Johnson, with the contents thereof, and delivering to him a true copy thereof.

S. SIBLEY.

Subscribed and sworn to by S. Sibley before me this 8th day of June, 1872.

H. E. ANDREWS, *Clerk.*

THE CITY OF MEMPHIS
vs.
T. E. BROWN. }

&

T. E. BROWN
vs.
THE CITY OF MEMPHIS. } Cross-bill.

On this 13th day of June, 1872, the counsel for T. E. Brown appeared and asked the continuance of taking depositions herein until the
97 17th inst., at the same time and place as in the notice.

H. E. ANDREWS,
U. S. Com'r.

Adjourned to the 19th day of June, 1872, at request of attorney for T. E. Brown, from this 17th day of June, as per above adjournment.

H. E. ANDREWS,
U. S. Com'r.

T. E. BROWN
vs.
THE CITY OF MEMPHIS.

THE CITY OF MEMPHIS
vs.
T. E. BROWN.

Pursuant to adjournment under the notice hereto attached, I proceeded to take depositions as follows:

Deposition of W'm M. Farrington.

W'M M. FARRINGTON, being duly sworn, deposes and says:

Int. 1. How much does the city of Memphis owe you or your
98 bank, or any other persons to your knowledge, on account of the indebtedness secured by the trust-deed on the city engine-houses made in 1870?

Answer. The city of Memphis, according to my recollection, does not owe us anything on that account.

Int. 2. Was the indebtedness secured by a deed of trust ever taken up at your bank?

Answer. The bank having no interest in the deed of trust, I cannot answer that question.

Int. 3. Has the city paid you anything on account of indebtedness of July coupons of 1871, since Mr. Reed's answer to the garnishment about ten days ago?

Answer. I think about fourteen hundred and seventy-five dollars has been paid on that account.

Int. 4. Has the city, or any one for the city, deposited any money in your bank of the funds of the city to the credit of the city or to the credit of the party depositing since the garnishment?

99 Answer. My impression is that no such deposits have been made.

W'M M. FARRINGTON.

Sworn and subscribed to before me this 19th day of June, 1872.

H. E. ANDREWS, *Com'r.*

Deposition of John Johnson.

JOHN JOHNSON, being duly sworn, deposes and says:

Int. 1. What is your official position; and how long have you held said office?

Answer. I am mayor of the city of Memphis, and held that position little over two years.

Int. 2. Has the city title to South Market property? If so, will you exhibit the deeds as an exhibit to part of the answer to this question?

Answer. The city has title to South Market property, and I will exhibit the deed.

100 Int. 3. How much and to whom is the city indebted on the trust-deed of the engine-houses made in 1870?

Answer. To the People's Insurance Co., fifteen thousand dollars. To me for ten thousand dollars; the remainder is paid.

Int. 4. Is the entire debt secured by the trust deed on the engine-houses and other property in 1868 satisfied?

Answer. So far as I know.

Int. 5. Are there various private markets or meat-stores in the city; and, if so, what is the city regulation concerning their business?

Answer. There are no private markets; there are various meat-stores. The city by her charter is not authorized to license them, all fresh meats less than a quarter being required to be sold at public market-houses; they exist by paying fines for violation of the charter and ordinances.

101 Int. 6. Has the city anything to prohibit the sale of any or all those things sold at the city market-houses by any person in any part of the city?

Answer. The city has authority and does prohibit during market hours the sale of many of those things.

Int. 7. Since the establishment of these meat-stores, has the occupancy of the city markets decreased; and, if so, to what extent?

Answer. I couldn't answer that question.

Int. 8. Are as many of the stalls in the market occupied now as three years since?

Answer. I think there are.

Int. 9. In your judgment, what proportion of the entire retail sale of fresh meat is made by the private meat-stores?

Answer. It would be impossible for me to say.

102 Int. 10. How much or what part of the North Market ground is actually used for market purposes?

Answer. About three-fourths, I should think.

Int. 11. How much rent does the city obtain for rent of part of North Market ground for lumber-yard?

Ans. About one hundred and twenty-five dollars.

Int. 12. About what part of the lot is so occupied?

Ans. Not over an eighth, I should think.

Int. 13. About what is the average rent of stalls in the market?

Ans. I could not say.

Int. 14. Does the city occupy the fifteen-acre tract in Garrett's subdivision called the Home for the Homeless?

Ans. It does not, and I think never has.

Int. 15. Does the association known as "The Home for the Homeless" occupy or rent it?

103 Ans. I think it is occupied by the Southern Soldiers' Home, under an agreement with the association known as "The Home for the Homeless," and not by themselves, i. e., "The Home for the Homeless."

Int. 16. Has it been the practice of the city to buy and sell real estate at various times during its corporate existence at the option of the city authorities?

Ans. The only transactions I know of was the purchase of the lot on the north end of the city for Potter's field, which was afterwards sold, and a fifty-one acre tract in the Norris tract on the Hernando road, bought by the city for the same purpose. This tract was sold by the sheriff on execution against the city, and has never been redeemed.

Int. 17. Concerning the piece of ground near the Charleston depot,

owned by the city, was that part of it north of Madison street ever used as a street?

104 Ans. My impression is that it was used as a common.

Int. 18. Has it been the practice, in the collection of debts by a process of law, to issue executions against the city property?

Ans. I cannot say.

Int. 19. Have you not observed advertisements of execution sales of city property and stocks, in newspapers, purporting to be execution sales during the last ten years?

Ans. I havn't seen advertisements of realty, but have seen advertisements of stocks.

Int. 20. Has the city, on several occasions, mortgaged various items of property?

Ans. I know of but two mortgages in 1868 and 1870.

Int. 21. Is the city indebted for the full amount of bonds of the Memphis and Little Rock R. R. Company, and for which the navy-yard is mortgaged?

105 Ans. No part of the bonds have been paid, but I hold that the city is not liable.

Int. 22. What interest has the city been paying on its loans the last two years?

Ans. Ten per cent.

Int. 23. How large an amount has she borrowed or paid that on at any one time?

Ans. About one hundred thousand dollars, I think.

Int. 24. What is the city's indebtedness, accruing the last two years and unpaid?

Ans. It is only the twenty-five thousand I have mentioned, aside the January coupons and some smaller amounts, say five or six thousand dollars, and the balance on the July, '71, coupons.

Int. 25. Has the city received her share of the stock in the Gayoso Gas Company yet?

106 Ans. She has received and sold it. She received and sold them about ten days since to B. F. White for five thousand dollars due promissory notes of the city. I made the sale.

Int. 26. How did you get the stock of the gas company, and how did you pay for it?

Ans. I paid, in gold-funding bonds of 1870, seven thousand dollars, three thousand having previously been paid. I got ten thousand dollars of the stock for the city.

JOHN JOHNSON.

Sworn and subscribed to before me this 19th day of June, 1872.

H. E. ANDREWS, *U. S. Com'r.*

Adjourned till to-morrow, at ten o'clock a. m.

H. E. ANDREWS, *U. S. Com'r.*

JUNE 20, 1872.—Pursuant to adjournment I proceeded to take the following depositions:

107 *Deposition of J. E. Hulme.*

J. E. HULME, being duly sworn, deposes and says:

Int. 1. What is your residence, occupation, and how long have you been engaged in that business?

Ans. Memphis. I am a butcher; have been engaged in that occupation during my life.

Int. 2. Where have you carried on this business?

Ans. At a private shop, 582 Main st.

Int. 3. About how many of these private meat-shops are there in this city?

Ans. Some twenty to twenty-five, I should think.

Int. 4. Are all the articles for sale at the city market-houses for sale at various private stores about the city?

108 Ans. Everything is kept in the private stores that is found in the markets.

Int. 5. State whether or not the private meat-shops are increasing in the city in the patronage they receive over the market-houses.

Ans. They are. A large number of private meat-shops are now being opened. The business of the South Market is about the same as one year ago, while that of the North Market has decreased considerably; not over one-half of the stalls being occupied now. There was a time when they were nearly all occupied; but, since the private meat-stores here became more popular, the city-market business has been decreasing.

Int. 6. What is the comparative value and convenience to the public generally of the city markets to the private markets, or meat and vegetable stores?

Ans. The meat-stores are much more convenient to the people.

109 The city markets are so far away from a large number of the people that they are of no use to them. Besides, they are only open a few hours of the day. In warm weather the meat purchased at the markets in the morning will spoil before night, ice being so expensive the poorer class of people are unable to buy it. Private markets being scattered about in different parts of the city, they can purchase it at any time of day they desire.

Int. 7. What do you pay the city a month?

Ans. We pay the city twenty-five dollars a month for each store, which they call the privilege tax. At any rate I pay twenty-five dollars a month to the collector of the privilege taxes, and he receipts for it, and that is all the demand the city makes of us for carrying on the business of a private butcher. The city used to give us a license, but for two years or so they have not, but tried by litigation to break up the meat-stores; but in this they failed. The object of the twenty-five dol-

110 lar tax was to compel us to go to the city markets, and break up the business at the private stores. Notwithstanding this large tax, the meat-stores are becoming more numerous. In my market I also sold butter and eggs, and the city required me to take out a grocer's license, for which I paid twenty-five or twenty-four dollars a year, I think.

J. E. HULME.

Sworn and subscribed to before me this 20th day of June, 1872.

H. E. ANDREWS, *U. S. Com'r.*

Deposition of George Crosby.

GEORGE CROSBY, being duly sworn, deposes and says:

Int. 1. What is your occupation, your residence, and how long have you followed that business?

Ans. Memphis, Tenn. I am a butcher; have followed that business in this city about six or seven years.

111 Int. 2. Where have you carried on this business?

Ans. About half of the time of each year at the market, and the other half at a private shop.

Int. 3. About how many of these private meat-shops are there in the city?

Ans. Not less than twelve, nor more than twenty, (20,) or thereabouts.

Int. 4. Are all those artieles for sale at the city market-houses for sale at various private stores about town?

Ans. They are.

Int. 5. State whether or not the private meat-shops are increasing in the city in the patronage they receive over the market-houses.

Ans. The private markets have increased in number, while the business of the city market-houses has decreased.

112 Int. 6. State, if you know, which, the city markets or the private meat-shops, are generally regarded in the community as the most convenient for the people.

Ans. The people prefer the shops, being more convenient, as they are situated in all parts of the city and are kept open during the entire day, while the public markets are kept open only a few hours in the morning of each day in the summer, and in the evening in the winter. The city markets are situated at so great a distance from many of the people that they are of no convenience or use to them.

Int. 7. What rent did you have to pay in the city markets?

Ans. Two hundred and fifty dollars a year for a stall. It has been reduced to two hundred dollars now, I think.

GEORGE CROSBY.

113 Sworn and subscribed to before me this 20th day of June, 1872.

H. E. ANDREWS, *Com'r.*

Deposition of Charles Kney.

CHARLES KNEY, being duly sworn, deposes and says:

Int. 1. What is your occupation, and how long have you been so engaged?

Ans. My occupation is a butcher; have been in that business about twenty-five years.

Int. 2. How long have you been in the Beale street market?

Ans. Since it was built, which was about 1859.

Int. 3. Is the North Market rented as fully as in former years; and, if not, to what do you attribute it?

Ans. I cannot say.

114 Int. 4. In what part of the city are there the most private meat-shops?

Ans. In the north part of the city.

Int. 5. Had the city-market butchers a litigation for several years with these private butchers?

Ans. We had. We wanted to see if we could enforce the city ordinances at law prohibiting the sales of fresh meats outside of markets during market hours. This litigation, I understand, is still pending; have heard nothing from it lately, and the private shops are still running.

CHARLES KNEY.

Sworn and subscribed to before me this 20th day of June, 1872.

H. E. ANDREWS,
U. S. Com'r.

UNITED STATES OF AMERICA,
District of West Tennessee, ss:

Be it remembered that, pursuant to the notice hereto attached, and adjournments thereunder, I proceeded to take depositions on the
115 19th day of June, 1872, of W. M. Farrington and John Johnson, and on the 20th depositions of George Crosby, and J. E. Hulme, & Charles Kney, and adjourned to the 25th instant the further taking of depositions.

HORACE E. ANDREWS,
U. S. Com'r.

Pursuant to adjournment, I proceeded to take the following deposition of J. J. Sears, on this 25th day of June, 1872.

Deposition of J. J. Sears.

J. J. SEARS, being duly sworn, deposes and says:

Int. 1. What is your name, age, residence, & occupation, and how long have you been so engaged?

Ans. John J. Sears; 43 years of age; Memphis, Tennessee; am making abstracts of title to real estate, in which I have been engaged about seven years.

116 Int. 2. Have you examined the records of conveyances in the county of Shelby, State of Tennessee; and, if so, with what degree of particularity and frequency?

Ans. I have. It has been almost my entire business to examine them, more or less every day, both by the tract or lot index, which I have assisted in making up, and by the names of parties to the conveyances.

Int. 3. Has it been the practice of the city of Memphis to both buy and sell real estate; and, if so, are there many or few such conveyances?

Ans. It was. There are a great number of conveyances, both to and from the city.

Int. 4. State some of the conveyances made by the city of Memphis.

Ans. I find, dated Nov. 14, 1871, a conveyance of so much of Pigeon-Roost road as lies between Union and Beale streets, and June 28, 1870, a conveyance of the several lots used for fire-engine houses, to
117 S. P. Read and others, in trust, to secure payment of fifty thousand dollars; on M'ch 9, 1868, a like conveyance to W. H. Bridges of the same lots, and fifty acres and fourteen (14) acres, and the north twenty-six feet of Exchange square, to secure payment of twenty thousand dollars; Oct. 29, 1866, a deed to M. C. Galloway and others of part of lot No. 115 on the plan of Memphis, having a front of twenty feet on Jefferson street; May 1, 1861, a trust-deed to W. B. Ross and others of the five engine-house lots, to secure indebtedness therein expressed; Nov. 11, 1859, deed to S. C. Mount of part of lots 34 and 36, Weakley tract, containing several acres; Aug. 10, 1859, quit-claim to James Wickersham, a tract or lot of ground near the Memphis and Charleston Railroad depot; Nov. 18, 1858, deed to R. B. DeBure of part of lot 218, 16½ × 90½ feet, Adams street; June 2, 1858, deed to Ernest Levy, part of lot No. 190, twenty feet front, on the east side of Main street; April 17, 1857, deed to F. W. Smith, 60 × 105 feet,
118 a'd'g Lamb's lot, being part of old Union street; Nov. 5, 1856, deed to John Saffarrans, old bed of bayou, used for Auction street; Nov. 19, 1855, warranty deed to G. W. Dixon, lot on Madison street; also lot on Court street extended; June 19, 1855, to C. W. Cherry, deed

7 3/10 × 684 feet, north side of arsenal grounds; Nov. 18, 1854, to J. D. Williams part of lot 247, being 18½ × 74½ feet; M'ch 2, 1854, to W. M. Folwell, lot 412, and part of country lot No. 479; Feb'y 11, 1854, to C. W. Cherry, lot known as the arsenal grounds; Aug. 3, 1849, to J. T. Leath, part of lot No. 408; the foregoing being the principal ones I have noticed.

Int. Have there been any sales of city property on execution? If so, state the conveyances and the parties to the suit.

Ans. There have. On September 30, 1869, there is a deed recorded by the sheriff to Rob't A. Hatcher, of fifty-four acres on Norris avenue, sold on judgment against said city by said Hatcher. On January 3, 1849, a conveyance was made by the sheriff of Shelby County to David
119 Gager, on execution against said city in favor of Isaac Miller, of a tract of twenty-four acres, which twenty-four acres was acquired by deeds from Eugene Majevine for five acres; from Elizabeth Anderson for seven acres, and from N. B. Holt for twelve acres, recorded in book H, page 280–284, made to the city.

Int. 6. Has the city acquired, by purchase, any lands and lots? If so, state generally to what extent.

Ans. They have. Most of the above-mentioned appear to have been conveyed to the city for a consideration expressed in the deeds. They also have a number of conveyances made to said city of lots now included in the navy-yard grounds.

Int. 7. Has the city made other conveyances than deeds? If so, what?

Ans. It has. It has made leases on lots in the navy-yard
120 ground to various parties—such leases extending for a term of years.

Int. 8. What are the conveyances, generally, to the city—of lands and lots?

Ans. The foregoing that I have mentioned pertaining to lots as mentioned in this deposition are made in the general form of warranty deed, conveying absolute title. There are also others, conveying ground to be used for streets only.

Int. 9. Are there private markets or stores in this city for the sale of meats and vegetables? If so, state in general terms the extent of such establishments.

Ans. There are. They are scattered all over the city. Purchases may generally be made there of everything that may be obtained in the city market-houses.

Int. 10. What is the relative convenience of the private markets to the city market-houses, to the citizens generally?

121 Ans. In my own case, the private are more convenient than the city markets. The city markets would be convenient for people living near them, but there being only two such markets in the city, a large majority of the population must necessarily be living at such a distance from them as to find it more convenient to patronize the private markets.

Int. 11. How long have you known the parcel of ground owned by the city lying between Charleston avenue and the Memphis and Charleston Railroad depot grounds, and what has been its condition?

Ans. About ten years. So far as I know, it has always been open as a common, with, perhaps, an exception of a short time, in which there were posts set around it, upon which there were one or two boards or plank, which are now removed. I think there are no trees nor other improvements on it now. This strip of about forty feet wide,
122 levied on in this case, was never graded or improved as a street,

to my knowledge. I think the city may have had more than forty feet in width, and perhaps are using a strip on the eastward side of said park of about eighteen feet in width, for street or public purposes. The strip mentioned has a stone curbing surrounding it, which prohibits its use as a street.

Int. 12. Has the parcel levied on and in controversy here ever been used as a park or promenade?

Ans. I should not think it had. I have never seen any shrubbery, grass, or shade-trees or walks upon it. Some trees were set out, but not protected against animals that were running at large, and they consequently were destroyed. I have seen the ground, perhaps, on an average of once a week for the last seven or eight years.

J. J. SEARS.

Sworn and subscribed to before me this 25th day of June, 1872.

123 H. E. ANDREWS,
U. S. Com'r.

UNITED STATES OF AMERICA,
Dist. of West Tennessee, ss:

Be it remembered that, pursuant to the notice hereto attached and adjournments thereunder, I proceeded to take the depositions of W'm M. Farrington and John Johnson, on the 19th day of June, 1872, at the office of the clerk of the U. S. circuit court, 450 Main s't, Memphis, Tennessee, and reduced the same to writing, and read the same over to the said witnesses, respectively, who then and there respectively swore to the same before me; and I then adjourned the further taking of depositions to the 20th day of June, 1872, at the same place, on which day, at said place, I proceeded to take the depositions of George Crosby, J. E. Hulme, and Charles Kney; and, after reducing the same to writing, read over the same to the said witnesses, respectively, who then and there swore to the same, and then adjourned to the 25th day of
124 June, 1872, when I proceeded, at the same place, to take the deposition of J. J. Sears, which I caused to be written out in part, and in part wrote myself, and read over the same to the said witness, who then and there swore to the same before me.

Witness my hand and seal this 28th day of June, 1872.

[L. S.] HORACE E. ANDREWS,
U. S. Com'r.

Exhibit to John Johnson's deposition.

This indenture made the 7th Dec'r, 1859, between W'm L. Vance, of the county of Mercer, State of Kentucky, of the one part, and the mayor and aldermen of the city of Memphis of the other part, witnesseth: That the said W'm L. Vance, for and in consideration of five thousand one hundred and eighty-eight dollars to him in hand paid by the mayor and aldermen of the city of Memphis, the receipt whereof is hereby acknowledged, hath given, granted, bargained, aliened,
125 conveyed, and confirmed, and by these presents doth give, grant, bargain, sell, alien, convey, and confirm unto the mayor and aldermen of the city of Memphis forever, a certain lot of land situate, lying, and being in the county of Shelby, city of Memphis, State of Tennessee, described as follows, to wit: Beginning at a stake on the north line of Beale street, fifty (50) feet west of the point where the

west line of Hernando street extended intersects with the north line of Beale street; thence northwardly at right angles to Beale street one hundred and fifty (150) feet to an alley; thence westwardly with the south line of said alley one hundred and seventy-five feet to a stake; thence southwardly one hundred and fifty (150) feet to a stake in the north line of Beale street; thence two hundred and four feet eastwardly with the north line of Beale street to the beginning: To have and to hold the aforesaid *the aforesaid* land, with all and singular the rights,
126 profits, emoluments, hereditaments, and appurtenances of, in, and to the same belonging or in anywise appertaining to the only proper use and behoof of the mayor and aldermen of the city of Memphis forever. And the said W'm L. Vance for himself, his heirs, executors, and administrators, doth covenant and agree to and with the mayor and aldermen of the city of Memphis, that he is lawfully seized in fee of the afore-granted premises; that the same are free from all incumbrances; that he hath good right to sell and convey the same to the mayor and aldermen of the city of Memphis as aforesaid; and that the before-granted land and premises he will warrant and forever defend against the right, title, interest, or claim of all and every person whatsoever.

In witness whereof the said W'm L. Vance hath hereunto set his hand and affixed his seal the day and year above written.

(Signed) W'M L. VANCE. [SEAL.]

Signed, sealed, and delivered in presence of—
J. H. H.
DEC. 7, '59.

127 *Deposition of John Johnson.*

Deposition taken on behalf of the city of Memphis, of which the defendant waived notice, and appeared by attorney, the city appearing by its attorney, W. M. Randolph.

JOHN JOHNSON, being duly sworn, deposes and says:

I am mayor of the city of Memphis, and have been since January, 1870. About the third day of April, 1871, two steam fire-engines, with hose, horses, and all the fixtures complete, belonging to the city, were levied on by the marshal under a writ of execution issued on the decree of T. E. Brown vs. The City of Memphis, rendered by the circuit court of the United States for the district of West Tennessee. The above property was kept by the city for the purpose of extinguishing fires, and for no other purpose. All the engines the city has are necessary
128 for the protection of the property of the city and its citizens from fire, and I think the city should have more. This is my judgment. The fire-engines and the property levied on belonging to them, together with the horses, could not be dispensed with consistently with the safety of the property of the city and its citizens. The building and premises on Poplar street, formerly known as the Poplar street engine-house, had been used as an engine-house for fifteen years; but about 1864 or 1865, the steam fire-engine No. 4 was moved to another engine-house, and since that time it has not been used as an engine-house, but as a stable by the city for the stock belonging to the street force in the engineer's department.

The boundaries of the navy-yard property are as follows:

It is bounded on the south by Market street, on the east by Front

street, on the north by the north line of Auction street extended to the Mississippi River, on the west by the Mississippi River, as shown on the published map of the city of Memphis.

The city purchased from the owners twenty-four lots on the
129 west side of Chickasaw (now called Front) street, each lot thirty-seven feet one and one-half inches on Front street, by depth one hundred forty-eight and half feet, not including the streets or alleys, being the lots on the original map of the city numbered from one to twenty-four. This was purchased about 1844 or 1845, for the purpose of squaring the tract of ground about being conveyed to the United States for a navy-yard. All the balance of the navy-yard property, except the triangle between Wolf and the Mississippi River, and the north line of Auction street, extended to the Mississippi River, and the accretions in front of the public landing and public promenade, as designated in Exhibit "E" to the bill, was dedicated to the public by the original proprietors of Memphis, as appears by the said Exhibit "E," which is a copy of a deed of record now in the office of register of Shelby County. All the navy-yard property is embraced in a
130 mortgage made by the city to secure three hundred of the bonds of the Memphis and Little Rock Railroad Company, amounting to three hundred thousand dollars. A copy of said mortgage is printed in Brige's Digest of the Ordinances of the City, 1867, which mortgage is unsatisfied.

Exchange Square, levied on by the marshal under the same execution about the same time, is included in Exhibit "E" before referred to. The property levied on about the same time under the same execution, situated on Beale and Poplar streets, respectively, and described in the bill of answer or pleadings in this cause as the property on which the market-houses stand, had been used exclusively for the purpose of carrying on the public markets of the city ever since it was purchased. It was purchased for the purpose of putting market-houses upon it. Those pieces of ground, or some others, are necessary for carrying on the public markets.

The piece of ground on Charleston avenue, levied on about
131 the same time under the same execution, has been known as public ground for about thirteen years. It was fenced and planted in shade-trees for a public square by the city about 1865 or 1866, and remained so for several years. Since that time it has been opened as public ground.

The works of the Water Company are within sixty or ninety days of completion. The construction of the water-works did not commence until after the city had made the contract in Exhibit "F" to the bill. In my opinion, the water-works could not have been built if this contract had not been made.

On cross-examination the witness answers as follows:

There remains still due on the trust-deed on the engine-houses and lots made in 1870 the sum of twelve thousand dollars.

The United States occupied the navy-yard property from the time of the conveyance of it by the city to the Government, about 1845,
132 up to the time it was ceded to the city, about 1854. They occupied it, constructing a navy-yard, the Government expending over a million of dollars.

Before the steam-fire department was organized, about 1864 or 1865, the fire department of the city was a volunteer organization, each company owning its engines, and the city its houses.

JOHN JOHNSON.

Sworn and subscribed to before me this 17th day of October, 1872.

H. E. ANDREWS,
U. S. Com'r.

Deposition of J. H. Humphreys.

J. H. HUMPHREYS, being duly sworn, deposes and says, that having read over the deposition of John Johnson, and concurs in and corroborates its statements in every respect, with the exception that he does not know personally how long the United States Government occupied the navy-yard gounds; nor does he know, personally,
133 anything of the mortgage mentioned in the examination, or its satisfaction. He states further that he is city engineer, and was for two years from 1858, and has been since the first of Jan'y, 1868, till now.

J. H. HUMPHREYS.

Sworn and subscribed to before me this 17th day of October, 1872.

H. E. ANDREWS,
U. S. Com'r.

This certifies that the foregoing depositions were taken before me and are answers of the witnesses, written out by me and read over to the witnesses, respectively, who thereupon signed and swore to the same, at my office, in Memphis, Tennessee, on the 17th day of October, 1872.

[L. S.] H. E. ANDREWS,
U. S. Com'r.

Deposition of Ethel H. Porter.

ETHEL H. PORTER, being duly sworn, deposes as follows:

134 Int. 1. How and by whom was the property, now known by some as the Soldiers' Home, occupied and used up to the war?

Answer. About the year 1858 or '59 so many men, women, and children, sick and destitute, assembled in and around Memphis, that a number of ladies, moved with a desire to do something for these destitute, met in 1860 and formed an association under the name of the Home for the Homeless, and, by an arrangement made and entered into with the mayor and aldermen of the city of Memphis, a tract of land east of the city was bought by the city of Memphis of Mr. John Brinkley of some 15 acres for said association, on which was a small house. The ladies took possession of the same, erected other and larger buildings, made necessary improvements for accommodating comfortably 40 or 50 persons, employed a matron, and filled their rooms with the destitute and helpless, providing work for those who were
135 able to help support the institution, thus saving the city from constant and large outlays for their relief.

Int. 2. What was its state during the war?

Answer. When the city of Memphis was surrendered to the Federal troops, said Home for the Homeless being outside the picket-line, regular communication was impossible. The inmates of the home were otherwise provided for, except a few small children. To best protect their property, and to provide a home for said children, the lady managers contracted with a Mr. Pridle to occupy the entire property by himself and family, to take and provide for said children, and to keep buildings, fences, &c., in as good condition as the unsettled state of the country

would admit of being done; which he did, and delivered the property to said lady directors at the close of the war, notwithstanding that, during the time he was in possession, the said home was sold for
136 U. S. direct tax, having been assessed in the name of John Brinkley, (former owner.) No one thought of property held for charitable uses being thus disposed of for tax, as it was exempt from State tax by our State law. The purchaser of said property at tax sale, I am informed, tried all means to get possession of the same, but failed in so doing, and the lady managers have held possession, through their agents, to the present time.

Int. 3. By whom has it been occupied since the war, and under what arrangement?

Answer. It has been occupied by from 20 to 40 disabled confederate soldiers, under an arrangement entered into by the lady managers on part of the Home for the Homeless, and Rev. Dr. Knoth on the part of the Soldiers' Aid Society.

Int. 4. How much rent is paid by the Soldiers' Aid Society, and how long so paid?

Answer. It was considered that so much of the property as
137 could be used by these disabled soldiers was put to a legitimate use, as the subjects of this charity are not only homeless, but some were entirely, others nearly helpless, and I am informed no rent was charged therefor. There were some 4 or 5 acres of land which the soldiers could not cultivate; this has been rented for 40 or 50 dollars a year, and said amount has been expended in relieving objects of charity by said lady managers.

Int. 5. Does the Soldiers' Aid Society own land adjoining said home, and how much?

Answer. I am informed there has been purchased some 50 acres of land for a Soldiers' Home in the neighborhood of the Home for the Homeless, but not adjoining, the two places being separated by a railroad, a wagon-road, and nearly half a mile of space. When buildings can be erected on said land, the disabled soldiers are to occupy the same, and the present land and buildings where they now are,
138 are to be put to the use in manner and form as contemplated in the original organization of said society, and at the purchase of said property.

ETHEL H. PORTER.

I, Horace E. Andrews, U. S. com'r, certify that the foregoing deposition of Ethel H. Porter was subscribed and sworn to before me in my office in Memphis, Tennessee, on the 17th day of October, 1872, and that the same was prepared by the said Ethel H. Porter, and accepted by the parties in the place of the same being written in full by me.

[L. S.] HORACE E. ANDREWS,
U. S. Com'r.

139 *Affidavit of Sears.*

STATE OF TENNESSEE,
County of Shelby, ss:

J. J. SEARS, being duly sworn, deposes and says he is a citizen of said county and State, and is engaged in the business of examining titles, and has been since the year 1865, and is now one of the firm of Sears & Greeley; that said firm have a carefully-prepared set of books of abstracts of titles to land in said county; that at the request of S.

Sibley, attorney for T. E. Brown, he has examined the records of titles to realty in said county. That such records show title in fee-simple in the city of Memphis by purchase for divers parcels of land, and that said city has conveyed by deed divers parcels of land, for considerations in money, expressed in such deeds; and that several parcels have been conveyed by the sheriff of said county on execution sales against the city of Memphis. That among others are the following, which are recorded at the dates hereafter stated, viz:

140 NOVEMBER 14, 1871.—So much of Marshall avenue, or Pigeon-Roost road, as lies between Union and Beal streets, in consideration of about the same quantity of land for an extension of Union street eastward from said Marshall avenue, which conveyance is to divers persons.

JUNE 28, 1870.—A conveyance of the several fire-engine house lots to S. P. Read and others, in trust to secure $50,000.

MARCH 9, 1868.—A conveyance by the city to W. H. Bridger, as trustee of said engine-house lots, and a 50-acre parcel and 14-acre parcel, and the north 26 feet of Exchange square, to secure a debt of $50,000, or thereabouts.

OCTOBER 29, 1866.—A warranty deed by the city to A. J. Galloway and others of part of lot 115 in the plan of Memphis, 20 feet front on Jefferson street.

MAY 1, 1861.—A trust deed by the city to W. B. Ross, and another of the fire-engine house lots.

NOVEMBER 11, 1859.—A warranty deed by the city to S. C.

141 Mount of a part of lots 34 and 36, in the plan of Memphis.

AUGUST 10, 1869.—A quit-claim deed by the city to Jos. Wickersham of 104 feet on the Memphis and Charleston Railroad.

NOVEMBER 18, 1858.—A warranty deed to R. B. De Bare, by the city, to a part of lot 218, being 16 $\frac{8}{12}$ feet by 90$\frac{1}{3}$ feet.

JUNE 2, 1858.—A warranty deed by the city to Earnest Levi of part of lot 190, being 20 feet front.

APRIL 17, 1857.—A warranty deed by the city to Fred. W. Smith, a parcel 105 feet by 60 feet, east of S. H. Lamb's lot, being a part of old Union street.

NOVEMBER 5, 1856.—A warranty deed by the city to John Suffarran, the bed of the bayou used for Auction street.

NOVEMBER 19, 1855.—A warranty deed by the city to G. W. Dixon to a lot on Madison street, and lot on south side of Court street extended.

JUNE 19, 1855.—A conveyance by the city to C. W. Cherry, of a parcel 7$\frac{3}{10}$ feet by 684$\frac{1}{2}$ feet, north side of arsenal ground.

NOVEMBER 18, 1854.—A conveyance by city to J. D. Williams of part of lot 247, being 18$\frac{1}{3}$ feet by 74$\frac{1}{2}$ feet.

142 MARCH 2, 1854.—A conveyance by the city to W. M. Folwell, of lot 412, and part of c. lot 479.

FEBRUARY 11, 1854.—A conveyance by the city to C. W. Cherry of a lot known as the "arsenal ground."

AUGUST 3, 1849.—A conveyance by city to J. T. Leash of a part of lot 408.

SEPTEMBER 30, 1869.—The sheriff of said county for said city of Memphis, a sheriff's deed to Robert A. Hutcher of fifty-four acres of land situate on Norris avenue, in S. E. corner of E. Shaw's tract, sold on execution on a judgment against said city.

JANUARY 3, 1849.—A conveyance by the sheriff of said county to David Geyer, on an execution sale on a judgment against said city

in favor of Isaac Miller, a parcel of 24 acres, which 24 acres was acquired by deed from Eugene Magiveny for 50 acres, from Elizabeth Anderson for 12 acres, and from N. B. Holt for 12 acres, recorded in book H, page 280, 284.

There also appear a number of conveyances to the city of lots now included in the "navy-yard" grounds, and a number of leases from the city to various parties of different parcels of said navy-yard ground.

143 The foregoing dates and references I believe are correct.

J. J. SEARS.

Subscribed and sworn to by J. J. Sears, before me this 6th day of June, A. D. 1872.

H. E. ANDREWS,
U. S. Com'r.

144 This indenture made and entered into this 25th of March, A. D. 1859, by and between Meredith Yates, (only heir-at-law of William Yates, deceased,) James Elder, and R. D. Cook, all of the city of Memphis, Shelby County, Tennessee, of the first part, and the mayor and aldermen of the city of Memphis of the second part, witnesseth:

That for and in consideration of the sums paid, and assumed to be paid, by the parties of the second part to said Yates, Elder, and Cook, as hereinafter set forth, viz: To said Yates, the sum of eleven thousand one hundred and forty five ($11,145) dollars, of which am't the sum of forty-three hundred & thirty-three and $\frac{33}{100}$ ($4,333\frac{33}{100}$) dollars has been paid to him in cash; and for the residue of which $6,811\frac{67}{100}$ the said mayor and aldermen have executed and delivered to said Yates their bond or obligation of this date, payable to him one year after date; but subject to a condition endorsed thereon, that said mayor and aldermen

145 may, (if they wish,) instead of paying all the amount named in said obligation, at the end of one year pay one-third thereof at that time, and the balance thereof in one and two years thereafter, in equal instalments of $2,270.55, with interest from date, on each of said sums until paid. To said Elder the sum of seven thousand one hundred and forty-five ($7,145) dollars; of which one thousand dollars has been paid in cash, and for the residue thereof said mayor and aldermen have executed and delivered to him their obligation of this date, payable to James Elder, at one year from date, ($6,145,) subject to the above specified condition endorsed on said bond for the payment of said sum of $6,145, in three equal instalments, at one, two, and three years from their date, with interest, (as above stated,) at the option of said mayor and aldermen. To said D. R. Cook, the sum of four thousand dollars; of which one thousand has been paid in cash, and for the remaining $3,000, said mayor and aldermen have executed and delivered their obligation of this date, payable to said Cook, one year after date, subject to the condition endorsed thereon for the payment of said sum in three equal annual

146 instalments, with interest, as above stated, at the option of said mayor and aldermen. In consideration of which sums so paid, and assumed to be paid as aforesaid, the parties of the first part, each for himself, hereby bargains, sells, conveys, enfeoffs, assigns, surrenders, releases, confirms, quit-claims, relinquishes, and delivers unto the mayor and aldermen of the city of Memphis and their assigns forever, (for the purposes of erecting thereon a market-house, and for such other purposes as they may wish,) all the right, title, interest, estate, and income in possession or reservation, vested or contingent, present or future,

legal or equitable, which they or either of them have jointly or separately of, in, or to the following-described lot or parcel of ground situate, lying, and being in said city of Memphis, and bounded as follows, viz: Beginning at a stake on the north line of Washington street, eighty (80) feet westwardly from W'm Yates' (now Meredith Yates) eastern and Cheek's western boundary-line; running thence westwardly with and along said street two hundred and ninety-two feet, more or less, to the eastern bank of Bayou Gayoso, (as it now is, it having been
147 straightened;) thence northwardly with said eastern bank in a straight line to the south line of Poplar street; thence eastwardly with and along Poplar street three hundred and ten feet, more or less, to a stake standing on the south line of said street, eighty (80) feet westwardly from said Cheek's western and said Yates' eastern line; thence in a straight line southwardly to the beginning; being a part of large lot No. 499, as laid down on Tod & Crider's and Rucker's maps of Memphis, &c., and a part of the ground devised or leased by W'm Yates, by deed dated 8th June, 1853, to said Cook for a term of fifty years; which deed is recorded in book No. 14, pages 14 & 15 of the register's office of said county. The interest and estate held by said parties of the first part, severally and hereby conveyed, quit-claimed or assigned as above stated, is, as follows, viz: said Yates, by descent and inheritance from his father, William Yates, owns the fee-simple and reversionary right in all the ground hereby conveyed, and as such owner and landlord receives the rent-money for said ground, which
148 fee-simple and reversionary interest, with all his right to rent, he sells, conveys, transfers, releases, and delivers to said mayor and aldermen as aforesaid; said Elder, by deed of lease from said Cook, dated 8th June, 1853, recorded in book No. 17, pages 496, 497, and 498 of the register's office of said county, has and owns a lease or term of fifty years (from that date) on the eastern part of the ground herein conveyed, fronting one hundred and fifty-seven (157) feet on Washington, and the same space on Poplar street, and embracing all the ground lying between said two fronts and a line running parallel to and one hundred and fifty-seven (157) feet west of another line parallel to and eighty feet west of said Cheek's western line, which ground for the unexpired part of said term of years, with all his rights and duties as lessee as aforesaid, said Elder conveys, assigns, quit-claims, surrenders, and delivers as aforesaid. Said Cook in like manner conveys, assigns, surrenders, quit-claims, delivers, relinquishes, and sets over
149 the unexpired time of his said term of years of and all his right
150 of every character whatsoever as lessee from said Yates or lessor to said Elder, over, of, in, and to the rest of said ground herein conveyed and described, as well as that conveyed by said Elder as aforesaid. The distinct understanding of the parties hereto being to make to said mayor and aldermen a present fee-simple title, accompanied with possession, without any incumbrance or particular estate intervening for the ground hereby conveyed, and that thereupon all the covenants for the payment of rent or taxes, or the re-delivery of said ground hereby conveyed between said parties of the first part, or any of them, or with said Wm. Yates, shall and does now cease, both between themselves and them, or either of them, and said mayor and aldermen; to have and to hold the said piece of ground herein described and conveyed, & the particular estates aforesaid therein, with all and singular the rights, ways, and rights of way, waters, privileges, rents and profits, hereditaments, and appurtenances thereunto pertaining or belonging, now connected with or arising from said premises, to the

only proper use and behoof of the said mayor and aldermen of
151 the city of Memphis and their assigns forever. The said Meredith Yates, for himself, his heirs and representatives, covenants with said parties of the second part to warrant and forever defend unto them and their assigns the fee-simple and reversionary right and title, as well as all his present right of, in, and to the within described and conveyed premises, against the right and title of all persons whomsoever; that the same is not encumbered by any act of his or his said ancestor, (excepting said lease of 8th June, 1853,) & that he hath a good and perfect right to sell and convey as aforesaid; and the said Cook and Elder, severally, each for himself and his heirs and representatives, covenant with said mayor & aldermen that the leasehold interests by them severally conveyed and assigned, quit-claimed, set over, and delivered as aforesaid, are free of let or incumbrance; and that for the residue of said terms of years they and their heirs and assigns will severally maintain said mayor and aldermen of Memphis, and their assigns, in the possession and enjoyment of said ground, and all
152 their rights in connection therewith against the claims of all persons claiming through or under them.

In witness whereof we have hereunto set our hands and seals the day & year first above written.

MEREDITH YATES. [SEAL.]
JAMES ELDER. [SEAL.]
D. R. COOK. [SEAL.]

STATE OF TENNESSEE, *County of Shelby:*

Personally appeared before me, John P. Trezevant, clerk of county court of said county, Meredith Yates, James Elder, D. R. Cook, the bargainers to the foregoing and hereto attached deed, with whom I am personally acquainted, and who acknowledged that they executed the same for the purposes therein contained.

Witness my hand, at office, this 28th day of March, 1859.

Rec'd State tax.

JOHN P. TREZEVANT, *Clerk*,
By E. B. TREZEVANT, *D. C.*

STATE OF TENNESSEE, *Shelby County:*

This deed was filed in my office for registration on the 2d day of April, 1859, at 11 o'clock a. m., & so noted in note-book No. 4,
153 page 97, and was duly recorded on the 29th day of the same month.

HENRY LAKE, *Register.*

This indenture, made this 28th January, 1859, by and between Anthony Chiarella of the first part, and the mayor and aldermen of the city of Memphis of the second part, witnesseth:

That the said Chiarella, for the price of thirty-seven hundred and fifty ($3,750) dollars paid him by the parties of the second part, (the receipt of which is hereby acknowledged,) hereby bargains, sells, conveys, and delivers unto the "mayor and aldermen of the city of Memphis," and their assigns forever, in fee-simple, a certain parcel of ground situate & lying in the city of Memphis, Shelby County, Tennessee, and bounded as follows, viz: Beginning at a stake standing at the point of intersection of the north line of Beale street with the west line of Hernando street; thence westwardly with the north side of Beale

154 street, fifty (50) feet to a stake; thence northwardly at right angles to Beale street, one hundred and fifty (150) feet to a stake; thence eastwardly, parallel to Beale street, fifty (50) feet to a stake; thence in a straight line one hundred and fifty (150) feet to the beginning; being the same ground conveyed by J. J. Murphy to said Chiarella, by deed dated 22d July, 1854, and recorded in book No. 17, pp. 264 and 265, and the same relinquished by John Johnson to said Chiarella by deed dated 15th February, 1855, and recorded in book No. 19, p. 236; to have and to hold the said described and conveyed lot, with all the hereditaments, rights, and appurtenances thereto belonging or in anywise pertaining, to the said "mayor & aldermen of the city of Memphis," and their assigns forever. And the said Chiarella, for himself, his heirs, and representatives, doth covenant and agree to & with the said parties of the second part, that unto them and their assigns said Chiarella and his heirs and representatives will warrant and forever defend the said bargained and conveyed premises against
155 the right, title, interest, and claim of all persons whomsoever; that said premises are unincumbered; that said Chiarella is lawfully seized and possessed thereof, and has a good right to sell and convey the same as aforesaid, and that he, his heirs and representatives, will make or cause to be made any and all further assurances of title necessary to perfect a fee-simple title to the said mayor and aldermen, & their assigns, for said lot of ground.

In witness whereof, the said Antonio Chiarella has hereunto set his hand and seal the day and year first above written.

ANTONIO + (his mark) CHIARELLA. [SEAL.]

Witness:
JOHN P. TRESEVANT.

STATE OF TENNESSEE, *Shelby County:*

Personally appeared before me, John P. Tresevant, clerk of the county court of said county, Antonio Chiarella, the bargainor to the foregoing and hereto attached deed, with whom I am personally acquainted, and who acknowledged that he executed the same for the purposes
156 therein contained.

Witness my hand at office this 22nd day of October, 1861.

JOHN P. TREZEVANT, *Clerk,*
By W'M H. LAKE, *D. C.*

STATE OF TENNESSEE, *Shelby County:*

This deed was filed in my office for registration on the 22d day of October, 1861, at 12¼ o'clock, p. m., and so noted in note-book No. 5, page 50, and was duly recorded on the 24th day of the same month.

JA'S W. KING, *Register.*

This indenture, made and entered into this twelfth day of November, in the year of our Lord one thousand eight hundred and sixty, between John H. Brinkley, of the county of Shelby and State of Tennessee, of the first part, and the mayor and aldermen of the city of Memphis, of the county of Shelby and State of Tennessee, of the second part, witnesseth:

157 That the party of the first part, for and in consideration of seven thousand dollars, on the following terms, viz: Fifteen

hundred dollars cash in hand paid; fifteen hundred dollars on the 1st day of January, 1861; two thousand dollars eight months after date, and two thousand twenty-four months after date; the last payment of two thousand dollars bearing interest at the rate of six per cent. per annum from date, and for which notes are made and executed by the mayor of the city of Memphis, bearing even date with this instrument, the receipt whereof is hereby acknowledged, hath given, granted, bargained, sold, and conveyed, and by these presents do give, grant, bargain, sell, convey, and confirm unto the party of the second part, and their successors in office, in fee-simple forever, a certain tract of land situate, lying, and being in the county of Shelby and State of Tennessee, known and described as follows, viz: Beginning at a point north sixty-one (61) degrees east from the east line of Springdale avenue, 6 chains and 59 links, and 25 links north of the centre of the Memphis and
158 Ohio Railroad; from thence north twenty-seven (27) chains and thirty-seven (37) links to a stake; thence east five (5) chains and seventy-six (76) links to a stake; thence south twenty-four (24) chains and sixty-nine (69) links; thence south sixty-one (61) degrees, west six (6) chains and fifty-two (52) links to the place of beginning, containing fifteen acres, more or less, and about three and a half miles from the city of Memphis. And the said J. H. Brinkley does hereby expressly retain and reserve a lien upon the said land and bargained premises, to secure the payment of the said described notes executed by the mayor of the city of Memphis for the deferred purchase-money as above specified; to have and to hold the above-described land and premises, together with all and singular the rights and privileges, buildings, improvements, and appurtenances of, in, or to the same belonging or in any wise appertaining, unto the party of the second part, and their successors in office forever. And the party of the first part, for himself and his heirs, executors, and administrators, doth hereby covenant to & with
159 the party of the second part and their successors that he is lawfully seized in fee of the afore-granted land and premises; that he has good right to sell and convey the same as aforesaid, and that he will forever warrant and defend the title & quiet possession of the aforesaid land and premises, and every part thereof, unto the party of the second part, against the right, title, interest, or demand of all and every person whomsoever.

In testimony whereof the party of the first part has hereto set his hand & affixed his seal the day and year first above written.

J. H. BRINKLEY. [SEAL.]

Signed, sealed & delivered, in presence of—
J. B. MOSELEY,
RICH'D M. KIRBY.

STATE OF TENNESSEE, *Shelby County:*

Personally appeared before me, John P. Trezevant, clerk of county court of said county, J. H. Brinkley, the bargainor to the foregoing and hereto attached deed, with whom I am personally acquainted, & who acknowledged that he executed the same for the purposes therein
160 contained.

Witness my hand at office this 15th day of November, 1860.

JOHN P. TREZEVANT, *Clerk*,
By E. B. TREZEVANT, *D. C.*

STATE OF TENNESSEE, *Shelby County:*

This deed was filed in my office for registration on the 25th day of January, 1862, at 4½ o'clock p. m., and so noted in note-book No. 5, page 58, and was duly recorded on the 27th day of the same month.

JA'S W. KING, *Register.*

STATE OF TENNESSEE, *Shelby County:*

I, John Brown, register in and for said county, hereby certify that the foregoing and hereto attached 15 pages contain a full, true, and perfect copy of three several deeds to the mayor and aldermen of the city of Memphis. The first 8 pages contain the deed from Meredith Yates, James Elder, and D. R. Cook, to the property east of and adjoining Bayou Gayoso, and between Poplar and Washington streets, with the clerk's and register's certificates. The following three pages con-
161 tain the deed by Antonio Chiarella to said mayor and aldermen, with its certificates, & the last four pages the deed by J. H. Brinkley, with its certificates to same grantees, as fully and completely as the same are shown; the first in book 37, pages 405, etc., the third in book 50, 273, etc., and the second in book 49, pages 603, etc.

Witness my hand and seal this 7th day of June, 1872.

JOHN BROWN, *Register,*
By J. C. BUSTREE, *D. R.*

Fees, $6 40, paid by S. Sibley for T. E. Brown.

STATE OF TENNESSEE,
County of Shelby, ss:

I, Irving Halsey, judge of the second circuit court of Shelby County, Tennessee, certify that the above-named John Brown is register, & J. C. Bustree his deputy, and that his signature above is genuine, & the certificate to which it is attached is in the usual form for authenticating copies of said records; & that such officer is the proper custodian of such records.

IRVING HALSEY,
Judge 2nd Circuit Court of Shelby Co., Tennessee.

JUNE 22, 1872.

162 *Agreement of counsel.—Filed Oct.* 18, 1872.

CITY OF MEMPHIS }
vs.
TALLMADGE E. BROWN. }

In this cause it is agreed that the accompanying financial statement of the assets and liabilities of the city of Memphis, of date 31st August, 1872, may be filed without further proof, and that it shall be considered as evidence of the facts shown by it without further proof of them, saving to each party all legal objections for the incompetency and irrelevancy of the said facts.

W'M M. RANDOLPH,
City Attorney.

S. SIBLEY,
Sol'r for T. E. Brown.

OCTOBER 28, 1872.

163 *Assets and liabilities of the city of Memphis, August* 31, 1872.

LIABILITIES.

Bonded debt.

10 per cent. currency bonds,	Due Dec. 13, 1875	$10,000	
	Due July 1, 1896	15,000	
			$25,000
6 per cent. currency bonds,	Due July 1, 1873	$49,000	
	" " 1874	24,000	
	" " 1877	69,000	
	" " 1878	51,000	
	" " 1880	117,000	
	" " 1882	237,000	
	" " 1883	66,000	
	" " 1884	306,000	
	" " 1885	276,000	
	" " 1886	263,000	
	" " 1887	25,000	
	" " 1888	17,000	
	" " 1896	83,000	
	" " 1897	115,000	
	" " 1898	1,677,000	
	" " 1899	50,000	
	" " 1900	50,000	
	" " 1902	50,000	
			$3,525,000
6 per cent. gold bonds, due 1st Nov., 1900			252,000
Total bonded debt			$3,802,000

Floating debt.

Bills payable	$92,888 66
Greenback scrip	464 00
City scrip, (old,) estimated	5,893 11
Certificate of indebtedness	6 20
Judgments obtained	82,854 70
Coupons due previous to January, 1871, (estimated)	50,000 00
Coupons due Jan. 1, 1871	1,455 00
" " July "	3,745 00
" " Jan. 1, 1872	79,570 00
Coupons due July 1, 1872	107,555 00
" " Nov. 1, 1871, (gold)	90 00
" " May 1, 1872, "	360 00
Bonds past due	66,000 00
Ledger balance, (due individuals)	44,500 00
Total floating debt	$535,381 67

ASSETS.

For reduction of bonded debt.

241 bonds due by the purchasers of the city's stock in the Memphis and Charlestown Railroad Company	$241,000 00
15 bonds issued in 1869, as collateral security for city notes included in the bills payable	15,000 00
Total for reduction of floating debt	$256,000 00

For reduction of floating debt.

Taxes due on 42nd, 41st, and previous corporate years, payable in city indebtedness	$356,959 26
Taxes due on 43d and 44th corporate years, payable in cash	152,800 05
Total past due taxes	$509,759 31
Interest due by the purchasers of the city's stock in the Memphis and Charleston Railroad, to July 1, 1872	53,516 83
State of Tennessee, for coupons paid the State by purchasers of the city's stock in the M. and C. R. R., in June, 1861	15,000 00
Bills receivable, (Gallaway, Hampton & Co.'s note)	13,733 32
R. Topp, (mortgage)	38,000 00
Total for reduction of floating debt	$630,009 46

Assessed valuation, rate of tax per $100 *of valuation, and amount of taxes on real and personal property, from* 1860 *to* 1872, *inclusive.*

Corporate years.	A. D.	Wards.	Assessed valuation.	Rate per $100.	Amount of taxes.
			Dollars.	*Cents.*	$270,365 00
33d	1860	8	16,897,815	160	380,760 00
34th	1861	8	21,153,335	180	314,717 00
35th	1862	8	18,297,545	172	299,131 00
36th	1863	8	16,693,230	175	262,968 00
37th	1864	8	15,626,775	175	314,909 00
38th	1865	8	16,574,179	190	356,474 00
39th	1866	8	17,823,730	200	539,337 00
40th	1867	8	30,819,298	175	514,160 00
41st	1868	10	28,465,465	180	499,253 89
42d	1869	10	28,528,794	175	
43d	1870	8 old	23,026,725	200	486,681 47
"	"	2 new	1,756,425	150	
44th	1871	8 old	22,737,575	200	481,822 60
"	"	2 new	1,804,740	150	
45th	1872	8 old	24,750,702	250	632,928 60
"	"	2 new	1,797,950	190	

The rates for 1872 are composed of special taxes as follows: for sinking fund, 20 cents in the old and 10 cents in the new limits; for bond interest, 100 cents in the old 50 cents in the new limits; for schools, 30 cents in both, and for general purposes, (necessary current expenditures,) 100 cents in both, on the $100 of valuation.

Population of the city of Memphis at different dates.

In 1850, per U. S. census	8,811
In 1860, " "	22,623
In 1870, " "	40,230
In 1872, estimated	55,000

164 *Agreement of counsel.—Filed Oct* 18, 1872.

CITY OF MEMPHIS
vs.
T. E. BROWN.

In this cause the following agreement is made for the purpose of saving cost and the encumbering of the record:

On the 3d day of October, 1868, the city of Memphis filed a bill which is now pending and undetermined in the second chancery court of Shelby County against A. J. Kellar and others, the object of which was and is to obtain a decree for the amount of the two notes, which it appears by the pleadings in this cause the said Kellar and Galloway, Hampton & Co. owe the city of Memphis, and also to have certain property, real estate on which the said notes are a lien, decreed to be sold for their judgment.

The said cause stands for hearing at the present term of the said chancery court now in session.

The said Kellar and the said Galloway, Hampton & Co., are parties to the said suit, and Kellar, the real debtor, has answered, and orders pro confesso have been entered as to the other defendants.

On the 7th day of December, 1869, Evans Rogers, a judgment-
165 creditor of the city of Memphis to the amount of $3,647.45, besides interest and costs of suit, after a return of "no property" on his executions, filed a bill against the city of Memphis, the said Kellar, Galloway, Hampton & Co., and others, the object of which was to subject the said indebtedness of the said Kellar, and Galloway, Hampton & Co. to the city of Memphis to the payments of the said judgments of the said Rogers against the city of Memphis.

On the 14th day of September, 1870, the said Rogers filed a supplemental bill in the said cause, and the said bill and supplemental bill are yet pending in the said court undetermined, and stand for hearing at the present term of the court now in session; and the said Kellar, Galloway, Hampton & Co. are parties, and have been brought before the court by process.

The answer of the city sets up as a defense that the judgments were rendered on coupons cut from bonds issued by the city, and that the act of the legislature authorizing the issue of the bonds provided for
the levy of a tax to pay the coupons, and that the only remedy
166 for the payment of the judgments is to compel the levy of the tax, and that the property of the city cannot be subjected, by bill or otherwise, to the payment of the judgments.

This agreement is to be read as evidence in the place of and with the like effect as transcripts of the records of the said two suits, and subject to objection for irrelevancy or incompetency only.

Done this 17th day of October, 1872.

W'M M. RANDOLPH,
City Att'y for City of Memphis.
S. SIBLEY,
Att'y for Brown.

167 *Agreement of counsel.*

THE CITY OF MEMPHIS
vs.
T. E. BROWN.

It is agreed that the city of Memphis acquired title to parcel of land levied on and described as a parcel of land extending from Court street northward to Adams street, lying east of Charleston avenue, and west of the Memphis and Charleston Railroad depot, being thirty feet, more or less, from the east line of Charleston avenue, eastward, in width from Court to Jefferson street, and diminishing in width from Jefferson street northward to Adams street, where it is 13½ feet in width, more or less, by purchase for consideration paid by the city, and deeds to the city thereunder, which deeds are in the usual form of warranty deeds, conveying fee-simple title to the city without condition or trust, and made in 1857, or about that time.

168 And that the city acquired and holds title by like purchases and conveyances to the several parcels described in the pleadings as the engine-house lots, being the first five parcels described in the advertisement of sale of the marshal.

It is agreed that the book known as "Bridge's Digest" may be considered in evidence, so that either party may read any instrument therein, or law or evidence therein, without proof preliminary thereto, and without said book being filed in the case, and may be so used in this court without its further special incorporation in this record.

October 28th, 1872.

W. M. RANDOLPH,
For City of Memphis.
S. SIBLEY,
Attorney for T. E. Brown.

169 *Agreement of counsel.*

In the circuit court of the United States for the district of West Tennessee. In equity.

THE CITY OF MEMPHIS
vs.
T. E. BROWN.

In this cause it is agreed that the several exhibits filed with the pleadings in the cause may be read as evidence without further proof, except that the original of Exhibit B to the bill, being the execution and marshal's proceedings thereunder, may be read, if desired by either party, instead of the copy on file.

It is further agreed that the original deeds to the city of Memphis, being five in number, conveying the property levied on under the execution known as the "engine-houses of the city," may be read as
170 evidence without being filed; and in case of an appeal or writ of error, the same shall be copied into the transcript, and form a part of the record. It is further admitted as a matter of evidence, subject to objection for irrelevancy or incompetency, that the said several pieces of property were purchased for the purpose of maintaining "engine-houses," which were built by the city, and that the same have been used and are still used as "engine-houses," except the lot on

Poplar street, which is used as detailed in the deposition of John Johnson, on file in this cause.

It is further agreed the copies of deeds on file in this case may be read in evidence without further proof or certification than that of the register or judge as now appearing thereto, and the deed referred to, and made exhibit to evidence of John Johnson, without further proof thereof.

October 16, 1872.

S. SIBLEY, *Att'y for Brown.*
W'M M. RANDOLPH,
City Attorney.

171 *Order entered.—Oct.* 21, 1872.

CITY OF MEMPHIS
vs. } 170.
T. E. BROWN.

This cause coming on to be heard upon the bill and the amendments thereto, the answer and amendments thereto, the cross-bill and the answer thereto, and the replications to the said answers, and the exhibits referred to in said pleadings, and the agreements of counsel, and the depositions and other testimony on file; and it appearing to the court that the relief prayed for in said bill was the subject of a motion in the original cause, in which the execution issued, and not of an original bill: It is ordered that the same be dismissed, and that the plaintiff, The City of Memphis, pay the costs thereof, to be taxed by the clerk; and the execution issue therefor; and, further, that the cross-bill of the defendant, T. E. Brown, be dismissed.

And the said T. E. Brown now moves the court for an enquiry for the assessment of his damages, sustained by reason of the suing out of the injunction; which motion is continued by the court.

172 And thereupon The City of Memphis prayed an appeal from said decree, so dismissing the said bill, and the same is granted upon its executing an appeal-bond conditioned for the payment of costs, with security to be approved by the clerk, within the time prescribed by law.

Order entered.—Oct'r 21, 1872.

CITY OF MEMPHIS
vs. } 147.
T. E. BROWN.

On motion of The City of Memphis, by her solicitor, leave is asked to make a motion instanter for a perpetual stay of proceedings, as prayed for in the bill of complaint this day dismissed, filed by The City of Memphis against T. E. Brown, defendant; and that the bill and amendments and the answers to the cross-bill do stand and be taken as affidavits on the hearing of the said motion, and that the answer to the said bill and the cross-bill of the said T. E. Brown do stand and be

173 taken as affidavits in opposition to the said motion; and that the proofs in the said cause be considered by this court in determining the said motion. And the said T. E. Brown being present in court by his counsel, said leave is granted; and this order is deemed and taken to stand for said motion.

And the same coming on to be heard, and said affidavits and proofs being read, and counsel thereupon being heard, it is ordered that proceedings on said execution be perpetually stayed as to all the property mentioned in the affidavits, on behalf of the city of Memphis, upon the ground that it is held by a municipal corporation for governmental purposes, and for that reason it is not subject to sale under the order or process of this court, except the shares of the stock owned by the city of Memphis in the capital stock of the Memphis Water Company, which, although held for governmental purposes, the court considers subject to sale for the debts of the said corporation, but not under the execution issued herein on the first day of April, 1872, and upon said latter ground the proceedings on said execution are perpetually stayed
174 as to said stock in said water company also.

Whereupon the said T. E. Brown, by his counsel, prayed an appeal from the foregoing order sustaining the motion and perpetually staying the said proceedings on the said execution to the Supreme Court of the United States; which prayer is granted, and the amount of the bond to be given on such appeal, conditioned for the payment of costs, is fixed in the sum of five hundred dollars.

Appeal bond.

Circuit court of the United States for the district of West Tennessee.

Know all men by these presents that we, The City of Memphis, in said district, and John Johnson, are held and firmly bound unto T. E. Brown in the sum of five hundred dollars, to be paid to said Brown, his executors and administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators firmly by these
175 presents. Sealed with our seals, & dated this 23rd day of November, 1872. Whereas the above-named City of Memphis hath prosecuted an appeal to the Supreme Court of the United States to reverse a decree rendered in the circuit court of the United States, in equity, for said district, in favor of said Brown and against said city: Now, therefore, the condition of this obligation is such that if the above-named City of Memphis shall prosecute its said appeal to effect, and answer all damages and costs if it shall fail to make good its plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

CITY OF MEMPHIS,
JNO. JOHNSON, *Mayor.* [SEAL.]
JNO. JOHNSON. [SEAL.]

Signed, sealed, and delivered in presence of and approved by me this 23d day of November, in the year 1872.

JOHN B. CLOUGH,
Com'r of U. S. Circuit Court.

(Indorsement on cover:) No. 409. The City of Memphis, appellant, vs. Tallmadge E. Brown. W. Tennessee C. C. U. S. Filed 17th February, 1873.